

**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
SPECIAL MEETING**

**Thursday, October 24, 2019
10:30 AM**

1947 Center Street, 3rd Floor - Magnolia Room

Committee Members:

Mayor Jesse Arreguin, and Councilmembers Sophie Hahn and Lori Droste

AGENDA

Roll Call

Public Comment on Non-Agenda Matters

Minutes for Approval

- 1. Minutes - October 3, 2019**

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

- 2. Referral to City Manager to Return to Council with an Amnesty Program for Legalizing Unpermitted Dwelling Units** *(Item contains supplemental materials)*
From: Councilmembers Wengraf, Harrison, and Hahn, and Mayor Arreguin
Referred: April 8, 2019
Due: December 6, 2019
Recommendation: That the City of Berkeley create and launch an Amnesty Program to incentivize the legalization of unpermitted dwelling units in order to improve the health/safety and preserve and possibly increase the supply of units available. A set of simple and clearly defined standards and a well-defined path for meeting those standards should be established in order to achieve the greatest success.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
- 3. Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender** *(Item contains revised materials)*
From: Councilmembers Harrison, Hahn, and Davila
Referred: June 10, 2019
Due: March 5, 2020
Recommendation: Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.
Financial Implications: None
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 4. Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance**
From: Mayor Arreguin, Councilmember Davila, Councilmember Harrison, Councilmember Robinson
Referred: July 8, 2019
Due: December 24, 2019
Recommendation: Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.
Financial Implications: Unknown
Contact: Jesse Arreguin, Mayor, 981-7100
- 5. Spring 2019 Bi-Annual Report on Funding for Housing Programs**
From: Housing Advisory Commission
Referred: September 10, 2019
Due: February 18, 2020
Recommendation: Accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues to increase the supply of affordable housing and protect residents of Berkeley from homelessness.
Financial Implications: See report
Contact: Mike Uberti, Commission Secretary, (510) 981-7400

Committee Action Items

6. **Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street**
From: City Manager
Referred: October 1, 2019
Due: March 10, 2020
Recommendation: 1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF).
2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.
Financial Implications: See report
Contact: Kelly Wallace, Housing and Community Services, 981-5400
Note: At the June 11, 2019, meeting Council approved a recommendation directing the City Manager to issue a Request for Proposals to select a qualified organization to purchase the single family home at 1654 Fifth Street to operate as housing for the homeless.
7. **Inclusionary Units in Qualified Opportunity Zones**
From: Councilmembers Harrison, Hahn, Davila, and Bartlett
Referred: October 15, 2019
Due: March 24, 2020
Recommendation: Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in developments in Qualified Opportunity Zones (QOZs). Refer to the Adeline Corridor Subcommittee of the Planning Commission to consider how such a requirement would affect the Adeline Corridor Plan.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- None

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

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*Written communications addressed to the Land Use, Housing & Economic Development Committee and submitted to the City Clerk Department will be distributed to the Committee prior to the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on October 17, 2019.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.

**BERKELEY CITY COUNCIL LAND USE, HOUSING, & ECONOMIC
DEVELOPMENT COMMITTEE
REGULAR MEETING**

**Thursday, October 3, 2019
10:30 AM**

2180 Milvia Street, 6th Floor- Redwood Room

Committee Members:

Mayor Jesse Arreguin, and Councilmembers Sophie Hahn and Lori Droste

Roll Call: 10:32 a.m. Mayor Arreguin absent.

Public Comment on Non-Agenda Matters – 1 speaker

The Committee decided to move the Special meeting scheduled for October 10, 2019, to October 24, 2019.

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - September 19, 2019

Action: M/S/C (Hahn/Droste) to approve the minutes of September 19, 2019.

Vote: Ayes – Droste, Hahn; Noes – None; Abstain – None; Absent – Arreguin.

Mayor Arreguin present at 10:40 a.m.

Committee Action Items

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Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

Committee Action Items

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From: Councilmembers Wengraf, Harrison, and Hahn, and Mayor Arreguin
Referred: April 8, 2019
Due: December 6, 2019
Recommendation: That the City of Berkeley create and launch an Amnesty Program to incentivize the legalization of unpermitted dwelling units in order to improve the health/safety and preserve and possibly increase the supply of units available. A set of simple and clearly defined standards and a well-defined path for meeting those standards should be established in order to achieve the greatest success.
Financial Implications: See report
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

Action: Item continued to next meeting on October 24, 2019.
- 3. Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender** *(Item contains revised materials)*
From: Councilmembers Harrison, Hahn, and Davila
Referred: June 10, 2019
Due: March 5, 2020
Recommendation: Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.
Financial Implications: None
Contact: Kate Harrison, Councilmember, District 4, 981-7140

Action: Item continued to next meeting on October 24, 2019.
- 4. Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance**
From: Mayor Arreguin, Councilmember Davila, Councilmember Harrison, Councilmember Robinson
Referred: July 8, 2019
Due: December 24, 2019
Recommendation: Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.
Financial Implications: Unknown
Contact: Jesse Arreguin, Mayor, 981-7100

Action: 8 speakers. Discussion held. The Mayor is working on providing updated rental unit numbers by owner. The Committee would like to better understand the current laws and the Mayor will invite the Rent Board to be part of the discussion at a future meeting.

Item continued to next meeting on October 24, 2019.

Committee Action Items

5. Spring 2019 Bi-Annual Report on Funding for Housing Programs

From: Housing Advisory Commission

Referred: September 10, 2019

Due: February 18, 2020

Recommendation: Accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

Financial Implications: See report

Contact: Mike Uberti, Commission Secretary, (510) 981-7400

Action: 0 speakers. Discussion held. The Committee requested more information on the full funding picture including allocations made, the full balance, conditions, and legal restrictions for Measure O, the Housing Trust Fund and U1 revenues.

Item continued to next meeting on October 24, 2019.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

- None

Items for Future Agendas

- Discussion of items to be added to future agendas

Adjournment

Action: M/S/C (Hahn/Droste) to adjourn the meeting.

Vote: All Ayes.

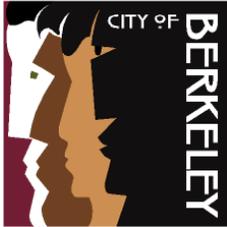
Adjourned at 12:19 p.m.

I hereby certify that this is a true and correct record of the Land Use, Housing, & Economic Development Committee meeting held on October 3, 2019.

April Richardson, Assistant City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
April 23, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Wengraf, Harrison, Hahn, and Mayor Arreguin
Subject: Referral to City Manager to Return to Council with an Amnesty Program for Legalizing Unpermitted Dwelling Units

RECOMMENDATION

That the City of Berkeley create and launch an Amnesty Program to incentivize the legalization of unpermitted dwelling units in order to improve the health/safety and preserve and possibly increase the supply of units available. A set of simple and clearly defined standards and a well-defined path for meeting those standards should be established in order to achieve the greatest success.

FINANCIAL IMPLICATIONS

Staff time in Planning, Building and Safety, and Legal Departments

BACKGROUND

Berkeley currently has an inventory of thousands of unpermitted dwelling units that are either being rented illegally or are being kept off the market. Building inspectors are required, under current regulations, to tell owners that these illegally constructed units must be demolished when it is discovered that they were built without permits.

While legal construction should always be the goal, many of the existing unpermitted structures in Berkeley are being put to beneficial use and have existed in the community for years. As long as safety and habitability can be ensured, the continued use of these units is in the public interest, especially given the crisis of available housing and very high housing costs.

Realizing that the state-wide housing crisis has created extraordinary circumstances, and that it is critical to preserve the current housing stock, many California cities have already enacted amnesty programs to address this issue. For example, San Francisco, City of Alameda, Daly City, County of San Mateo, County of Santa Cruz, Los Angeles, West Hollywood all have programs in place that incentivize the legalization of illegally constructed units.

ENVIRONMENTAL SUSTAINABILITY

Preserving dwelling units, rather than demolishing them is consistent with our Climate Action Goals

Referral to City Manager to Return to Council with an Amnesty Program for
Legalizing Unpermitted Dwelling Units

CONSENT CALENDAR
April 23, 2019

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

San Mateo County Second Unit Amnesty Program
Attachment: Program Scope and Description

1. Program Overview

The Second Unit Amnesty Program (“program”) will provide inspection, rehabilitation guidance, rehabilitation assistance, and registration of program completion for certain second units built without required permits. The goal of the program is to improve as many unpermitted second units as possible to basic standards of habitability, without displacing residents or removing units from the housing stock.

Key components of the program include:

- a. A 24-month amnesty period during which applicants may participate in the program and improve their units without incurring fines, penalties, or code enforcement action that typically results from unpermitted construction.
- b. The opportunity for applicants to explore the feasibility of meeting program requirements, in the initial application stages, without facing code enforcement action.
- c. County assistance in identifying necessary improvements and estimating the cost of such improvements, and in assessing the overall feasibility of rehabilitation for potential applicants.
- d. Other incentives for participation, including suspension of otherwise-applicable Planning and Building regulations and standards, and reductions in typical Planning and Building fees.
- e. Other potential financial assistance for eligible second units from Housing Department funding.
- f. Registration of units that successfully complete the program. The Planning and Building Department (“Department”) will issue a Second Unit Registration Record to such units, memorializing completion of the program and affirming the suspension of code enforcement related to issues identified and addressed through the program.

The program will provide multiple possible paths to program completion:

- a. If units can be feasibly brought into full compliance with all current standards, these units will be legalized and issued certificates of occupancy.
- b. If units can be brought into compliance with the standards in effect at the time they were built, such units will be considered “grandfathered” and inspected pursuant to the standards in effect at that time (except that such units will be required to meet those current standards that the Community Development Director (“Director”) determines are necessary to ensure health and safety).
- c. If units cannot feasibly achieve compliance with current standards or the standards in effect at the time they were built, the Director will have discretion to suspend application of certain Planning regulations and Building Code standards to the extent that the Director determines that such adjustments are consistent with appropriately maintaining health and life safety.

Second units that are renovated to meet these reduced compliance standards will receive a Second Unit Registration Record, which will provide a proof of final inspection and program completion. This record will include an inventory of the issues identified and improvements made within the parameters of the program. This record will assure participants that the Planning and Building Department will not pursue subsequent code enforcement action for issues identified or improvements made in relation to the program. However, issues arising after issuance of the Second Unit Registration Record, or issues related to other areas of the property, will not be exempt from potential code enforcement action.

- d. Unit inspections, and assistance with program guidance for applicants, will be performed by an external consulting firm retained for this purpose (“Amnesty Inspector”), rather than County inspectors. This approach is intended to separate the program from the County’s normal inspection and code enforcement processes, to reassure potential program participants that they will not face code enforcement action based on participation in the program, and to avoid potential conflicts for County inspectors.

Because the total number of unpermitted second units and the condition of those units is unknown, staff is unable to precisely identify the number and nature of units that may be included in the program, the nature of repairs required, and the specific incentives that may be most effective in encouraging participation. Therefore, staff proposes vesting the Director with a degree of flexibility in administering and making adjustments to the program as it proceeds.

2. Program Details

- a. Pilot Program. In advance of full program launch, the Planning and Building Department and the Housing Department will recruit 4 or 5 participants for a focused trial of the program. Program participation will be incentivized with a small cash grant (around \$1,000), which can be used however the applicants wish. The pilot program is intended to mirror, as closely as possible, the anticipated process and experience of full program participants, but with the applicants' understanding that they are participating in a test, and may experience unanticipated difficulties, delays, and challenges. The pilot will run for approximately five months, from May 2018 to September 2018.
- b. Program Term. The amnesty eligibility "window" or program term, following the pilot phase, will be 24 months. The program is intended to formally commence in September 2018.
- c. One-Year Check-In. While the Department will adjust and improve the program throughout its duration, the Department will also provide the Board of Supervisors a comprehensive report on progress approximately twelve months after the program begins. At that point, the Board of Supervisors could direct the Department to continue the program with no changes, make substantive changes, or terminate the program, depending on the outcomes of the first year.

If participants apply to the program prior to the end of the program term, they will be eligible to participate until completion of the Amnesty process (i.e., applications pending at the time of program termination will be processed to completion). This means that inspection, rehabilitation, and registration of units may continue for some time after the end of the eligibility window.

- d. Coastal Zone Applicability. Staff proposes to exclude units in the County's Coastal Zone from participation during the first year of the program, due to the complexity and ambiguity of issues related to potential Coastal Commission review or approval, Coastal Development Permit requirements, and other complications typical of development or redevelopment in the Coastal Zone. Depending on the outcomes of the first year of the program, the Board of Supervisors may direct staff to include the Coastal Zone during the second year.

- e. Unit Eligibility. Any second dwelling unit created without some or all necessary approvals will potentially be eligible for inclusion in the program, subject to the following conditions:
- One Unit Only. Only one unpermitted unit per property will be eligible for the program.
 - Residential Zoning. Units must be located in an “R” (Residential) Zoning District (R-1, R-2, R-3, R-E, R-H, etc.). Units in other zoning districts will not be eligible. As currently proposed, units in the Coastal Zone will not be eligible during the first 12 months of the program, regardless of zoning district, but may be eligible during the second year.
 - In-Service Date of Units. To be eligible for the program, units must have been built before January 1, 2017 and occupied prior to adoption of the authorizing ordinance.
 - Proof of Residential Use. Applicants must demonstrate, to the satisfaction of the Director, that the unit has at some point been used as a residence. Possible methods of proof include, but are not limited to:
 - o Utility bills or other bills and/or records, in the name of a tenant or resident other than the primary homeowner(s).
 - o Written lease agreements with current or former occupants.
 - o If the unit is currently occupied, current residents of the unpermitted unit may provide an affidavit attesting to residency.
 - o If the unit is not currently occupied, the owner of the unpermitted unit may provide an affidavit attesting to prior residential use, along with a supplemental affidavit confirming prior residential use from a third party, such as a neighbor or former resident.
 - o Other evidence demonstrating residential use, to the satisfaction of the Director.
- f. Compliance Standards. As described above, there are multiple paths to program completion, either in the form of full legalization, or issuance of a Second Unit Registration Record. Safety and compliance standards for units that cannot be fully legalized will be based on San Mateo County’s adopted Building Code and other standards, with modifications.

All units will be required to comply with the Fire Code and Environmental Health Code without modification (including standards for and proof of

availability of water, wastewater, plumbing, and septic service, and required fireproofing and defensible space clearance, among others). Building regulations related to seismic safety, ingress and egress, and ventilation will also apply without modification.

The Director will have the discretion to determine the Planning standards and/or Building Code standards that may be suspended or modified.

Examples of the type of Planning and Building standards that the Director may modify or suspend include:

- Zoning Regulations (such as unit placement, size, design, setbacks, height, and other standards).
- Energy efficiency standards.
- Insulation and heating requirements (to allow alternative means of meeting these standards).
- Window size requirements.
- Ceiling height requirements.
- Outlet placement requirements.
- Lighting fixture requirements.
- Other standards that can be modified without impacting the safety of the unit.

Upon the Director's determination of Planning and Building standards that may be modified or suspended for a given unit, the Planning and Building Department will identify the program standards applicable to the unit in a written form provided to the applicant, and will implement the standards throughout the application and inspection process.

- g. Fee Modifications/Waivers. Units participating in the program will be exempt from fees and penalties for unpermitted construction. At the discretion of the Director, applicants may also be eligible for reductions or waivers from normally applicable Planning and Building fees. All other standard fees will apply, including fees from the Environmental Health Division, the Department of Public Works, and any non-San Mateo County entities, such as water and sewer service providers.
- h. Code Enforcement/Inspection Limitations. The purpose of the program is to ensure the habitability of the second unit only. Inspections will not address or pursue other issues that might be identified on the property or in the

primary unit of an applicant, with the exception of issues that pose an immediate danger to life safety of the occupants or the surrounding community. The primary unit and surrounding property will not be inspected, except to the extent that such inspections are necessary to adequately evaluate the second unit. Information identified during the initial pre-application phases will also not be used for code enforcement purposes.

- i. Inspections. There will be a minimum of two inspections by the Amnesty Inspector for each participating second unit:
 - The first inspection will be an initial feasibility assessment, before the applicant formally commits to the program. This inspection will help identify those improvements that would be required to successfully complete the program. The Amnesty Inspector will provide a document that will help the applicant estimate necessary work and costs.
 - After the unit is renovated, the Amnesty Inspector will complete at least one additional inspection, to ensure that required work has been satisfactorily completed. At this point, a Second Unit Registration Record may be issued.
- j. Planning/Zoning Compliance; Second Unit Regulations Apply. The primary objective of the program is to achieve an appropriate level of habitability of the units; however, units will still be reviewed for compliance with Zoning Regulations. The County's revised regulations for second units (Chapter 22.5 of the County Zoning Regulations) will apply to all participating unpermitted second units in any "R" (residential) Zoning District.
- k. No Public Noticing or Hearings. Consistent with the approval process for new second units in the Second Unit Ordinance, the Planning and Building Department will not hold public hearings or provide public notice of any application for inspection, improvement, and registration of second units through the program.
- l. Application Tracking. Applications will be tracked as a new "Second Unit Registration" permit type in the Planning and Building Department permit system. Other normally required permits will be issued and tracked in the usual manner.
- m. Application Process.
 1. Self-Assessment. Applicants will be required to complete a unit self-assessment, using a tool provided by the Planning and Building Department, to help determine the potential work and cost required, feasibility of the improvements, and eligibility for the program.

2. Pre-Application Review. Applicants will be required to confer in person with the Planning and Building Department to further determine eligibility for the program, and refine the assessment of necessary work and cost. Applicants will be required to provide their completed self-assessment, as well as all information regarding the unit and the property required to effectively assess its eligibility.
3. Pre-Application Inspection. The Amnesty Inspector will inspect the unit and create a detailed assessment of work required to achieve compliance with applicable standards. The applicant will be provided with this guidance, which they may use to obtain cost estimates for the required work.

Steps 1, 2, and 3 are pre-application stages. During these stages, applicants may withdraw from the program without penalty, and information collected to that point will not be used for code enforcement purposes. However, if applicants choose to proceed to formal application (Step 4), they must commit to all necessary improvements, and may not withdraw without facing penalties for unpermitted construction, and normal requirements to fully upgrade, remove, or convert the unit. The pre-application stage is the last chance to withdraw from the program without penalty.

4. Formal Application. At this stage the applicant must formally apply for the program, complete all application materials, and pay any required application fee. Formal application commits applicants to the program, and they may not subsequently withdraw without penalty. After application, permitting and inspection will follow the typical path for a normal project, subject to the program standards determined by the Director, and with all inspections completed by the Amnesty Inspector. The Department will also establish a timeline for completion of improvements, and the applicant must adhere to the timeline or be subject to resumption of code enforcement activities.
5. Final Inspections. After improvements are complete, the Amnesty Inspector will conduct one or more inspections of the unit, to determine if the work has been satisfactorily completed.
6. Issuance of Second Unit Registration Record. Once the unit has been inspected and determined to be in compliance with program standards, a Second Unit Registration Record will be issued, memorializing the improvements and assuring that the Department will not pursue subsequent code enforcement actions related to issues identified or work completed within the purview of the program.
7. Program Outreach and Publicity. The Planning and Building Department and the Housing Department will create and distribute

materials publicizing and describing the program. Initial distribution will be to those areas of the unincorporated County that have been identified as most likely to have the largest numbers of unpermitted units, with possible expansion to broader areas as the program proceeds.

8. Materials and Resources; Policies and Procedures. The Planning and Building Department, in collaboration with the Housing Department, the County Manager's Office, the County Counsel's Office, and Baird & Driskell (consultants), will create and promulgate all necessary materials to implement the program, including self-assessment tools, application forms, program guidance documents, inspection forms, explanatory materials, forms and affidavits certifying eligibility, internal guidance documents, and all other necessary materials.
9. Management. The program will be managed by the Planning and Building Department, in collaboration with the Housing Department.
10. Staffing. Staffing needs are estimated at:
 - a. One part-time contract inspector (Amnesty Inspector) and program administrator, hired and managed by the Planning and Building Department.
 - b. One loan program administrator, hired and managed by the Housing Department, from funds already approved and allocated.
 - c. Existing Planning, Building, and Housing staff time to implement and manage the program: assumed to be no more than 1 FTE.
11. Program Reporting. The Planning and Building Department will report to the Board of Supervisors periodically, in writing, on the progress of the program, and will provide a comprehensive assessment at the 12-month check-in point.
12. Existing Notices of Violation. For second units eligible for the program that have existing notices of violation, the Director will have the discretion to temporarily suspend or wholly rescind the notice(s) of violation, and to waive any outstanding fines or liens that may be levied on the property related to such violations.
13. Rehabilitation Loans. The program will be administered in coordination with a Rehabilitation Loan Program provided by the Housing Department for eligible applicants, from an initial \$500,000 fund already dedicated and approved for this purpose.

ORDINANCE NO. .
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

* * * * *

AN ORDINANCE ADOPTING THE SECOND UNIT AMNESTY PROGRAM TO INSPECT, REHABILITE, AND IMPROVE THE SAFETY AND HABITABILITY OF UNPERMITTED SECOND UNITS IN UNINCORPORATED SAN MATEO COUNTY

SECTION 1. RECITALS. The Board of Supervisors of the County of San Mateo hereby finds and declares as follows:

WHEREAS, San Mateo County and the greater Bay Area are experiencing an extreme shortage of available housing units, with unaffordable housing costs for occupants at all income levels; and

WHEREAS, in California Government Code Section 65852.150, the Legislature declared that second units are “an essential component of California’s housing supply” because they “provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods” and that “homeowners who create [second] units benefit from added income, and an increased sense of security;” and

WHEREAS, San Mateo County recently revised its Second Unit Ordinance to facilitate and incentivize the production of second units; and

WHEREAS, as the County Board of Supervisors affirmed, in the adoption of that ordinance, that second units are an important and beneficial source of housing that plays an important role in addressing the County’s housing needs; and

WHEREAS, the County’s Second Unit Ordinance allows the creation of second units on parcels within the unincorporated County that contain, or will contain, a primary dwelling unit; and

WHEREAS, many such second units are created through the normal permitting and approval process; and

WHEREAS, a number of second units in the County have been created without obtaining required Planning, Building, and other permits and approvals; and

WHEREAS, those second units, while unpermitted, provide a source of housing for occupants in need of housing, often at a cost that is more affordable than other housing options; and

WHEREAS, while such second units help to address the housing needs, they may also present conditions that are inadequate with respect to safety or habitability; and

WHEREAS, such unpermitted units may also present safety risks to adjacent structures and properties; and

WHEREAS, bringing such second units into full compliance with all current planning, zoning, and building regulations may be infeasible in some cases due to cost, regulatory restrictions, or other constraints; and

WHEREAS, absent other measures, addressing such units that cannot be brought up to full compliance with all current regulations would require such units to be removed or converted to non-residential use; and

WHEREAS, demolition or conversion of these units would result in displacement of occupants and loss of housing units, thereby exacerbating the County's housing shortage; and

WHEREAS, this Board seeks to have the Planning and Building Department, the Housing Department, the County Counsel's Office, and the County Manager's Office collaborate to implement a "Second Unit Amnesty Program" ("program"), to allow applicants to remediate health and safety conditions in these unpermitted second units while relaxing certain existing permitting standards and processes, and without imposing the normally applicable fees and other penalties for unpermitted construction; and

WHEREAS, offering a process for safety and habitability improvements that provides an alternative to the otherwise-applicable permitting and legalization process, and that also avoids code enforcement action that might result in the removal or conversion of these unpermitted second units, can help improve the safety and habitability of such units while maintaining the units as part of the County's needed housing stock; and

WHEREAS, the program contemplates only rehabilitation, repair, and improvement of existing structures, and thus is categorically exempt from the California Environmental Quality Act ("CEQA") per Public Resources Code Section 21084 and CEQA Guidelines Section 15301, "Existing Facilities;"

NOW, THEREFORE, the Board of Supervisors of the County of San Mateo ordains as follows:

SECTION 2. ACTION. The Board of Supervisors authorizes and directs the Planning and Building Department and the Housing Department to proceed with the "Second Unit Amnesty Program" ("program") in the manner set forth in the Program Scope and Description attached to this Ordinance.

- The Board of Supervisors authorizes and directs the Planning and Building Department and the Housing Department, working in conjunction with the County Counsel's Office and the County Manager's Office, to implement the program in the manner set forth in this Ordinance, and authorizes the Planning and Building Department, in collaboration with the Housing Department, the County Counsel's Office, and the County Manager's Office, to make minor modifications to the program as deemed necessary to efficiently and effectively implement the program.
- The Board of Supervisors authorizes the Planning and Building Department to adopt such policies and undertake actions necessary to implement the program and achieve the program objectives.
- The Board of Supervisors authorizes the Community Development Director ("Director") to suspend and/or dismiss any code enforcement action imposed on those units that apply for and successfully complete the program.
- The Board of Supervisors authorizes the Director to waive all fees and penalties related to unpermitted construction for those units participating in the program.
- The Board of Supervisors authorizes the Director to waive, to the extent deemed appropriate, any and all fees set forth in the Planning Service Fee Schedule and Building Fee Schedule, to facilitate registration of unpermitted second units.
- The Board of Supervisors authorizes the Director to apply the County's Second Unit Ordinance (Zoning Regulations Chapter 22.5), to any unpermitted second unit in any "R" (residential) Zoning District, and to offer and apply additional exceptions to other Planning and Building regulations and standards beyond those included in the Second Unit Ordinance, at the Director's discretion.
- The Board of Supervisors directs the Planning and Building Department to report to the Board periodically on the progress of the program, and on the modifications to the program that have been deemed necessary by the Director.

SECTION 3. SEVERABILITY. If any provision of this Ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be invalidated.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days from the passage date thereof.

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SB-1069 Land use: zoning. (2015-2016)

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**OFFICE OF THE CITY CLERK
CITY OF BERKELEY**

Senate Bill No. 1069

CHAPTER 720

An act to amend Sections 65582.1, 65583.1, 65589.4, 65852.150, 65852.2, and 66412.2 of the Government Code, relating to land use.

[Approved by Governor September 27, 2016. Filed with Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1069, Wieckowski. Land use: zoning.

The Planning and Zoning Law authorizes the legislative body of a city or county to regulate, among other things, the intensity of land use, and also authorizes a local agency to provide by ordinance for the creation of 2nd units in single-family and multifamily residential zones, as specified. That law makes findings and declarations with respect to the value of 2nd units to California's housing supply.

This bill would replace the term "second unit" with "accessory dwelling unit" throughout the law. The bill would additionally find and declare that, among other things, allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock, and these units are an essential component of housing supply in California.

The Planning and Zoning Law authorizes the ordinance for the creation of 2nd units in single-family and multifamily residential zones to include specified provisions regarding areas where accessory dwelling units may be located, standards, including the imposition of parking standards, and lot density. Existing law, when a local agency has not adopted an ordinance governing 2nd units as so described, requires the local agency to approve or disapprove the application ministerially, as provided.

This bill would instead require the ordinance for the creation of accessory dwelling units to include the provisions described above. The bill would prohibit the imposition of parking standards under specified circumstances. The bill would revise requirements for the approval or disapproval of an accessory dwelling unit application when a local agency has not adopted an ordinance. The bill would also require the ministerial approval of an application for a building permit to create one accessory dwelling unit within the existing space of a single-family residence or accessory structure, as specified. The bill would prohibit a local agency from requiring an applicant for this permit to install a new or separate utility connection directly between the unit and the utility or imposing a related connection fee or capacity charge. The bill would authorize a local agency to impose this requirement for other accessory dwelling units.

This bill would incorporate additional changes in Section 65852.2 of the Government Code proposed by AB 2299 that would become operative only if AB 2299 and this bill are both chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65582.1 of the Government Code is amended to read:

65582.1. The Legislature finds and declares that it has provided reforms and incentives to facilitate and expedite the construction of affordable housing. Those reforms and incentives can be found in the following provisions:

- (a) Housing element law (Article 10.6 (commencing with Section 65580) of Chapter 3).
- (b) Extension of statute of limitations in actions challenging the housing element and brought in support of affordable housing (subdivision (d) of Section 65009).
- (c) Restrictions on disapproval of housing developments (Section 65589.5).
- (d) Priority for affordable housing in the allocation of water and sewer hookups (Section 65589.7).
- (e) Least cost zoning law (Section 65913.1).
- (f) Density bonus law (Section 65915).
- (g) Accessory dwelling units (Sections 65852.150 and 65852.2).
- (h) By-right housing, in which certain multifamily housing are designated a permitted use (Section 65589.4).
- (i) No-net-loss-in zoning density law limiting downzonings and density reductions (Section 65863).
- (j) Requiring persons who sue to halt affordable housing to pay attorney fees (Section 65914) or post a bond (Section 529.2 of the Code of Civil Procedure).
- (k) Reduced time for action on affordable housing applications under the approval of development permits process (Article 5 (commencing with Section 65950) of Chapter 4.5).
- (l) Limiting moratoriums on multifamily housing (Section 65858).
- (m) Prohibiting discrimination against affordable housing (Section 65008).
- (n) California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3).
- (o) Community redevelopment law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, and in particular Sections 33334.2 and 33413).

SEC. 2. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for substantial compliance with this article, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for accessory dwelling units based on the number of accessory dwelling units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the

housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 where the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, or the relocation is otherwise provided prior to displacement either as a condition of receivership, or provided by the property owner or the local government pursuant to Article 2.5 (commencing with Section 17975) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, or as otherwise provided by local ordinance; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been found by the local government or a court to be unfit for human habitation due to the existence of at least four violations of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located either on foreclosed property or in a multifamily rental or ownership housing complex of three or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

- (i) The unit is made available for rent at a cost affordable to low- or very low income households.
- (ii) At the time the unit is identified for acquisition, the unit is not available at an affordable housing cost to either of the following:
- (I) Low-income households, if the unit will be made affordable to low-income households.
- (II) Very low income households, if the unit will be made affordable to very low income households.
- (iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households or if the acquired unit is occupied, the local government has committed to provide relocation assistance prior to displacement, if any, pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants displaced by the conversion, or the relocation is otherwise provided prior to displacement; provided the assistance includes not less than the equivalent of four months' rent and moving expenses and comparable replacement housing consistent with the moving expenses and comparable replacement housing required pursuant to Section 7260.
- (iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.
- (v) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 55 years.
- (vi) For units located in multifamily ownership housing complexes with three or more units, or on or after January 1, 2015, on foreclosed properties, at least an equal number of new-construction multifamily rental units affordable to lower income households have been constructed in the city or county within the same planning period as the number of ownership units to be converted.
- (C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:
- (i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to, and reserved for occupancy by, persons of the same or lower income group as the current occupants for a period of at least 40 years.
- (ii) The unit is within an "assisted housing development," as defined in paragraph (3) of subdivision (a) of Section 65863.10.
- (iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.
- (iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.
- (v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.
- (3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.
- (4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the period from the beginning of the projection period until the end of the second year of the planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.
- (5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) In the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(d) A city or county may reduce its share of the regional housing need by the number of units built between the start of the projection period and the deadline for adoption of the housing element. If the city or county reduces its share pursuant to this subdivision, the city or county shall include in the housing element a description of the methodology for assigning those housing units to an income category based on actual or projected sales price, rent levels, or other mechanisms establishing affordability.

SEC. 3. Section 65589.4 of the Government Code is amended to read:

65589.4. (a) An attached housing development shall be a permitted use not subject to a conditional use permit on any parcel zoned for an attached housing development if local law so provides or if it satisfies the requirements of subdivision (b) and either of the following:

(1) The attached housing development satisfies the criteria of Section 21159.22, 21159.23, or 21159.24 of the Public Resources Code.

(2) The attached housing development meets all of the following criteria:

(A) The attached housing development is subject to a discretionary decision other than a conditional use permit and a negative declaration or mitigated negative declaration has been adopted for the attached housing development under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). If no public hearing is held with respect to the discretionary decision, then the negative declaration or mitigated negative declaration for the attached housing development may be adopted only after a public hearing to receive comments on the negative declaration or mitigated negative declaration.

(B) The attached housing development is consistent with both the jurisdiction's zoning ordinance and general plan as it existed on the date the application was deemed complete, except that an attached housing development shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the attached housing development site has not been rezoned to conform with the most recent adopted general plan.

(C) The attached housing development is located in an area that is covered by one of the following documents that has been adopted by the jurisdiction within five years of the date the application for the attached housing development was deemed complete:

(i) A general plan.

(ii) A revision or update to the general plan that includes at least the land use and circulation elements.

(iii) An applicable community plan.

(iv) An applicable specific plan.

(D) The attached housing development consists of not more than 100 residential units with a minimum density of not less than 12 units per acre or a minimum density of not less than eight units per acre if the attached housing development consists of four or fewer units.

(E) The attached housing development is located in an urbanized area as defined in Section 21071 of the Public Resources Code or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the attached housing development consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(F) The attached housing development is located on an infill site as defined in Section 21061.0.5 of the Public Resources Code.

(b) At least 10 percent of the units of the attached housing development shall be available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code, or at least 20 percent of the units of the attached housing development shall be available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or at least 50 percent of the units of the attached housing development available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code. The developer of the attached housing development shall provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low-, or moderate-income households for a period of at least 30 years.

(c) Nothing in this section shall prohibit a local agency from applying design and site review standards in existence on the date the application was deemed complete.

(d) The provisions of this section are independent of any obligation of a jurisdiction pursuant to subdivision (c) of Section 65583 to identify multifamily sites developable by right.

(e) This section does not apply to the issuance of coastal development permits pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(f) This section does not relieve a public agency from complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or relieve an applicant or public agency from complying with the Subdivision Map Act (Division 2 (commencing with Section 66473)).

(g) This section is applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is of vital statewide importance, and thus a matter of statewide concern.

(h) For purposes of this section, "attached housing development" means a newly constructed or substantially rehabilitated structure containing two or more dwelling units and consisting only of residential units, but does not include an accessory dwelling unit, as defined by paragraph (4) of subdivision (j) of Section 65852.2, or the conversion of an existing structure to condominiums.

SEC. 4. Section 65852.150 of the Government Code is amended to read:

65852.150. (a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

SEC. 5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days of submittal of a complete building permit application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of accessory dwelling units.

(b) (1) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall ministerially approve the creation of an accessory dwelling unit if the accessory dwelling unit complies with all of the following:

(A) The unit is not intended for sale separate from the primary residence and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The accessory dwelling unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(F) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements that apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed accessory dwelling units on lots zoned for residential use that contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(4) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of accessory dwelling units if these provisions are consistent with the limitations of this subdivision.

(5) An accessory dwelling unit that conforms to this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not otherwise permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon fire and life safety conditions. This subdivision shall not apply to a unit that is described in subdivision (e).

(e) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(f) Notwithstanding subdivisions (a) to (e), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(g) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (f), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (f), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(h) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of accessory dwelling units.

(i) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(j) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 5.5. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in single-family and multifamily residential zones. The ordinance shall do all of the following:

(A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety.

(B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001-02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

(c) A local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units. No minimum or maximum size for an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings that does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

- (1) The accessory dwelling unit is located within one-half mile of public transit.
- (2) The accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

SEC. 6. Section 66412.2 of the Government Code is amended to read:

66412.2. This division shall not apply to the construction, financing, or leasing of dwelling units pursuant to Section 65852.1 or accessory dwelling units pursuant to Section 65852.2, but this division shall be applicable to the sale or transfer, but not leasing, of those units.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 65852.2 of the Government Code proposed by both this bill and Assembly Bill 2299. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 65852.2 of the Government Code, and (3) this bill is enacted after Assembly Bill 2299, in which case Section 5 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

DETAILS



No commitment

Explore the program prior to formal application. No risk of any penalty or code enforcement.



Low cost plus financial support

Take advantage of low cost initial inspections and minimal fees—plus the possibility of rehabilitation loans for some qualified applicants.



Achievable standards and detailed guidance for compliance

Comply with easily achievable rehabilitation standards and the assistance of County and 4LEAF staff throughout the process.



No risk of penalties and future code enforcement

Obtain a certification record to ensure your second unit will not be subject to future code enforcement.

BENEFITS



Improve property values

Formalize your second unit to make your property more desirable to potential buyers.



Reduce risks

Have peace of mind that you will not have to deal with unexpected fines or future code enforcement.



Healthy and safe living conditions

Get greater assurance that your second unit is habitable and does not present risks to occupants.



COUNTY OF SAN MATEO

Planning and Building Department
455 County Center, 2nd Floor
Redwood City, CA 94063

IN PARTNERSHIP WITH



4LEAF, INC.



RECEIVED AT
COUNCIL MEETING OF:

JUL 18 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY

FOR MORE INFORMATION

To schedule a consultation with County staff and begin the process of exploring the amnesty program with no risk of any code enforcement action, contact:

William Gibson
wgibson@smcgov.org
650-363-1816

<https://planning.smcgov.org/second-unit-amnesty>



SECOND UNIT Amnesty Program

A program for formalizing/rehabilitating existing second units built without necessary permits and approvals

DRAFT



SECOND UNIT AMNESTY PROGRAM

San Mateo County is offering an amnesty program for existing second units (aka granny units, in-law units, accessory dwelling units) built without some or all necessary permits and approvals.

PROGRAM GOALS

Enable homeowners to bring their second units into compliance with basic health and safety standards without the risk of fines and code enforcement action—and with significant fee reductions and assistance in determining necessary improvements.

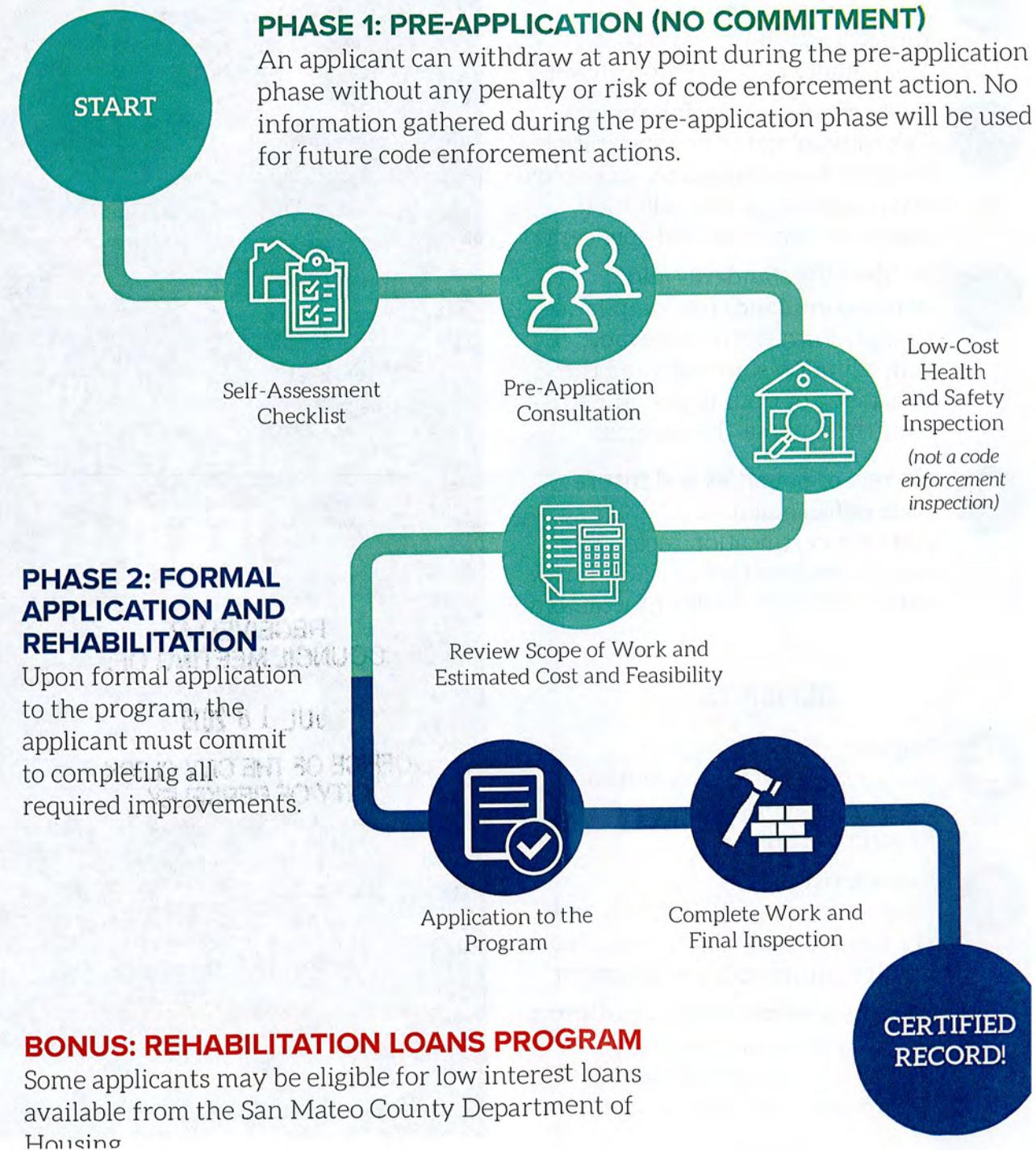
LIMITED TIME ONLY!

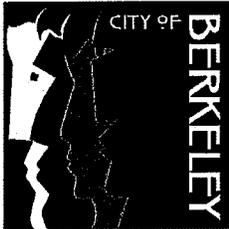
This program is only available for a limited time, between one to two years, beginning early 2019. You must apply soon to be eligible.

SECOND UNIT ELIGIBILITY

- Built prior to January 2017
- Currently or previously occupied by a resident (Must show proof)
- Located on a residentially zoned parcel (i.e. zoning districts R-1, R-2, R-3, NMU, or PC)
- Located outside of the County's Coastal Zone

WHAT DOES THE PROCESS LOOK LIKE?





Susan Wengraf
Councilmember District 6

RECEIVED AT
COUNCIL MEETING OF:

SEP 19 2019

OFFICE OF THE CITY CLERK
CITY OF BERKELEY
September 19, 2019

A FRAMEWORK for establishing an Amnesty Program for Undocumented
Second Units

What is the problem?

Research indicates that Berkeley may have thousands of undocumented secondary units. Over the years, these units have been referred to as "granny units", "in-law units", "accessory dwelling units" and "second units". Some of these units are being rented, some are vacant. Legalizing these undocumented units and encouraging occupancy will benefit our entire community. The goal of the Amnesty Program is to allow as many undocumented secondary units as possible to be legalized ensuring basic health and safety and habitability standards.

Whatever the reason for lack of documentation, the city needs to be able to affirm that these units meet building and safety standards and other city regulations. Owners need to be assured that they will not be criminalized for renting undocumented units and tenants need to be assured that their housing is safe.

The challenge before us is to design a program that successfully achieves the following key goals:

1. Encourages voluntary participation of owners of undocumented units to request legalization, while providing immunity from disciplinary enforcement action.
2. Sets a standard for health and safety that is not cost prohibitive to encourage compliance
3. Establishes a no interest loan fund for low and moderate income property owners to assist them to bring their undocumented units up to required standards established by the City so that they can be legalized
4. Establishes an amnesty period; a window of opportunity of perhaps 2 or 3 years, so that participation is incentivized and the program time is finite. Consideration needs to be given to staffing and advertising in order to maximize participation.

5. Creates a seamless customer-friendly city process involving Building, Zoning and Fire staff dedicated to legalizing secondary units and committed to the end goal of bringing these units into compliance so that they can be used as safe and legal housing.

Who is eligible?

The program should be available to any owner of a secondary unit who for whatever reason cannot produce documents demonstrating that a dwelling unit was created with permits. The phased approach (see below) will further define eligibility.

Who decides?

The program elements require numerous decisions by the city before the program can begin. Housing units are subject to multiple regulations: Building Code, Housing and Safety Code, Zoning Code, etc., overseen by many different divisions; Building, Zoning, Fire, and Rent Stabilization Board. Once guidelines are established, final decision-making should be delegated to a small team of staff, committed to the goals of the program. Their decisions must be transparent and implemented in a timely manner.

To facilitate the most effective and efficient services, the Residential Rental Housing Safety Program has been identified as the most efficient and effective approach for implementation of the Amnesty for Second Units program.

How to begin?

Given the complexity of the challenge to legalize undocumented second units, a phased approach will ensure that implementation is manageable and will give us a better chance of success.

Phase 1: limited to vacant Secondary Units in single family, owner occupied homes.

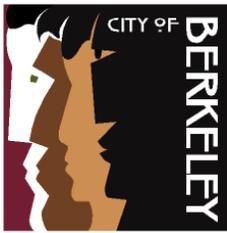
Focusing on these unoccupied units will simplify the program as we adjust and learn from our efforts. It also has the potential of bringing needed units to the market at a time when this type of housing is in great demand.

Phase 2: limited to undocumented secondary units in single family, owner occupied homes that are rented.

Phase 3: Includes single family homes with secondary units that are not owner occupied.

What are the ingredients for success?

1. A team of staff, dedicated to achieving the goals of the program. Creative thinking; thinking outside of the box, and final consensus among regulators will set Berkeley's program apart from other programs. Decisions must be made about which of the current codes are essential? Applying only the Housing Safety Code is one approach, but staff may have other suggestions.
2. Adequate staff resources, flexibility and training are essential to the program's success.
3. Using the Building Official's authority to review and accept alternate means and methods for determining health and safety equivalency on a case by case basis.
4. Complete buy-in from Code Enforcement and Rent Stabilization Board that no action will be taken against participants.
5. Creating "immunity standards" that are fool-proof, consistent and reassuring so that voluntary participation is encouraged.
6. Re-framing the City's approach to provide assistance rather than enforce and criminalize. Instead of: "We are here to tell you that you CANNOT rent your unit", change to "we are here to help you figure out HOW you can have a safe, legal rental unit."
7. Documentation and Updating Records is essential to a successful program. The applicant needs to have documentation that the unit has become a legally established dwelling unit.
8. Outreach and advertising. For this to succeed, the program needs to be publicized broadly. Adequate resources need to be allocated for a robust campaign to alert and inform potential applicants.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
June 25th, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Harrison, Hahn, and Davila
Subject: Adopt an Ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code Requiring Legal Rights for Legal Tender

RECOMMENDATION

Adopt an ordinance adding a new Chapter 9.50 to the Berkeley Municipal Code requiring legal rights for legal tender, requiring that all brick-and-mortar businesses accept cash.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

Consistent with sustainability goals.

BACKGROUND

For many Berkeley residents, particularly those who are denied access to credit or are unable to obtain bank accounts, the ability to purchase goods and services is depends on the ability to pay in cash. According to the 2017 Unbanked and Underbanked Households Survey,¹ 17% of all African American households and 14% of all Latino households in the United States had no bank account. Cash is an accessible medium of exchange in America, and stores not accepting cash payment systematically excludes segments of the population that are largely low-income people of color. Cashless business models may also have significant detrimental impacts on young people who do not meet age requirements for credit cards, for the elderly (many of whom have not transitioned to credit and digital payment modes or have restricted their access to them to avoid credit scams), and for other vulnerable groups such as homeless and immigrant populations.

Recently, San Francisco² joined Philadelphia³ and New Jersey⁴ in requiring that all brick-and-mortar businesses in the jurisdiction accept cash. As of today, there are few stores

¹ <https://www.fdic.gov/householdsurvey/>

² <https://www.courthousenews.com/%EF%BB%BFsan-francisco-will-require-stores-to-accept-cash/>

³ <https://6abc.com/politics/bill-looks-to-require-philly-businesses-to-accept-cash/5121309/>

⁴ <https://www.wbgo.org/post/bill-would-require-nj-retailers-accept-cash-payments#stream/0>

in Berkeley that do not accept cash, and so now is a good opportunity to guarantee that these discriminatory practices are not permitted in our City.

CONTACT PERSON

Kate Harrison, District 4 510-981-7140

ATTACHMENT:

1: Proposed Ordinance Adding BMC Chapter 9.50

ORDINANCE NO. –N.S.

ADDING A NEW CHAPTER 9.50 TO THE BERKELEY MUNICIPAL CODE
REQUIRING BRICK-AND-MORTAR BUSINESSES TO ACCEPT CASH

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 9.50 of the Berkeley Municipal Code is added to read as follows:

Chapter 9.50

LEGAL RIGHTS FOR LEGAL TENDER

Sections:

9.50.010 Findings and Purpose

9.50.020 Definitions

9.50.030 Brick-and-Mortar Businesses Required to Accept Cash

9.50.040 Exceptions

9.50.050 Enforcement

9.50.060 Severability

9.50.010 Findings and Purpose.

The Council finds and declares as follows:

- A. The City of Berkeley is duty-bound to provide its community with transactional access to the goods and services provided by Berkeley’s businesses. For many City residents, such as those unable to obtain bank accounts, the ability to engage in consumer transactions, including goods and services vital to health and safety, depends on the ability to pay with legal cash tender established by the federal government of United States.
- B. Cashless business models present significant detrimental impacts to vulnerable groups, especially low-income people, as they require financial institution-sponsored payment in credit or debit cards, or other non-cash forms of payment.
- C. Cash payment, in the form of the United States Dollar, has been the official legal tender since the country’s founding in 1792 and shall be recognized by brick-and-mortar businesses alongside other forms of legal tender.
- D. It is the intent of the Council to ensure Berkeley’s economy is inclusionary and accessible to everyone, including those who lack access to non-cash forms of payment.

9.50.020 Definitions.

- A. “Brick-and-Mortar Business” means any place of business operating at a fixed, permanent, physical premises. Brick and mortar business does not include any business operating from a vehicle or other mobile space (for example a food truck).
- B. “Cash” means United States currency, in the form of both paper Federal Reserve Notes and metal coins.

9.50.030 Brick-and-Mortar Businesses Required to Accept Cash.

- A. Except as set forth in 9.50.040, every Brick-and-Mortar Business within the City must accept payment in Cash, if offered, for any transaction involving the purchase of any tangible good and/or service.
- B. Except as set forward in 9.50.040, a Brick-and-Mortar Business may not charge a fee or place any other condition on its acceptance of Cash as required by subsection A.

9.50.040 Exceptions.

The provisions set forward in this Act shall not apply in cases of:

- A. Suspected counterfeit currency. A Brick-and-Mortar Business may refuse to accept Cash that the business reasonably suspects to be counterfeit.
- B. Large denominations. A Brick-and-Mortar Business may refuse to accept Cash in any denomination larger than a twenty dollar note, but shall otherwise accept any combination of Federal Reserve Notes and metal coins in connection with any transaction.

- C. Single transactions above \$5,000. Where a single transaction involves the purchase of one or more goods and/or services, the total price of which (including tax) exceeds \$5,000, a Brick-and-Mortar Business must accept Cash that is offered as payment for any amount up to \$5,000, but may refuse to accept Cash that is offered as payment for the remainder of the amount due.

9.50.050 Enforcement.

- A. The obligation to ensure that a Brick-and-Mortar Business complies with this Chapter 9.50 shall fall only on the business or, in the case that the owners of the business are responsible for a policy or practice causing a violation of this Chapter, on the owner or owners of the business. No employee or independent contractor working at a Brick-and-Mortar Business shall be held liable for any violation of this Chapter.
- B. Each transaction or attempted transaction in which a Brick-and-Mortar Business fails to accept Cash shall constitute a separate violation of this Chapter.
- C. Any violation of this Chapter shall be an infraction or misdemeanor punishable as hereinafter specified:
 - a. For a first violation, an infraction punishable by a fine not exceeding \$100 and not less than \$50.
 - b. For a second violation within a twelve month period, an infraction punishable by a fine not exceeding \$200 and not less than \$100.
 - c. For a third violation within a twelve month period, an infraction punishable by a fine not exceeding \$1,000 and not less than \$500.
- D. In addition to the penalties set forward in subsection (C), the court may order that a violator reimburse the City for all its costs, including attorney's fees incurred in investigating and prosecuting the enforcement action against that violator.

9.50.060 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King, Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. –N.S.

ADDING A NEW CHAPTER 9.50 TO THE BERKELEY MUNICIPAL CODE
REQUIRING BRICK-AND-MORTAR BUSINESSES TO ACCEPT CASH

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Chapter 9.50 of the Berkeley Municipal Code is added to read as follows:

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- A. The City of Berkeley is ~~duty-bound~~ committed to providing its community with transactional access to the goods and services provided by Berkeley's businesses. For many City residents, such as those unable to obtain bank accounts, the ability to engage in consumer transactions, including goods and services vital to health and safety, depends on the ability to pay with legal cash tender established by the federal government of United States.
- B. Cashless business models present significant detrimental impacts to vulnerable groups, especially low-income people, as they require financial institution-sponsored payment in credit or debit cards, or other non-cash forms of payment.
- C. Cash payment, in the form of the United States Dollar, has been the official legal tender since ~~the country's founding in~~ 1792 and shall be recognized by brick-and-mortar businesses alongside other forms of legal tender.
- D. It is the intent of the Council to ensure Berkeley's economy is inclusionary and accessible to everyone, including those who lack access to non-cash forms of payment.

9.50.020 Definitions.

- A. "Brick-and-Mortar Business" means any place of business operating at a fixed, permanent, physical premises. Brick and mortar business does not include any ~~business operating transactions occurring in from~~ a vehicle or other mobile space (for example a food ~~truck~~ vending facility).
- B. "Cash" means United States currency, in the form of both paper Federal Reserve Notes and metal coins.

9.50.030 Brick-and-Mortar Businesses Required to Accept Cash.

- A. Except as set forth in 9.50.040, every Brick-and-Mortar Business within the City must accept payment in Cash, if offered, for any transaction involving the purchase of any tangible good and/or service.
- B. Except as set forward in 9.50.040, a Brick-and-Mortar Business may not charge a fee or place any other condition on its acceptance of Cash as required by subsection A.

9.50.040 Exceptions.

The provisions set forward in this Act shall not apply in cases of:

- A. Suspected counterfeit currency. A Brick-and-Mortar Business may refuse to accept Cash that the business reasonably suspects to be counterfeit.
- B. Large denominations. A Brick-and-Mortar Business may refuse to accept Cash in any denomination larger than a twenty dollar note, but shall otherwise accept any combination of Federal Reserve Notes and metal coins in connection with any transaction.

- C. Single transactions above \$5,000. Where a single transaction involves the purchase of one or more goods and/or services, the total price of which (including tax) exceeds \$5,000, a Brick-and-Mortar Business must accept Cash that is offered as payment for any amount up to \$5,000, but may refuse to accept Cash that is offered as payment for the remainder of the amount due.

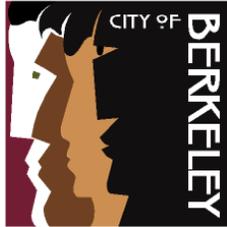
9.50.050 Enforcement.

- A. The obligation to ensure that a Brick-and-Mortar Business complies with this Chapter 9.50 shall fall only on the business or, in the case that the owners of the business are responsible for a policy or practice causing a violation of this Chapter, on the owner or owners of the business. No employee or independent contractor working at a Brick-and-Mortar Business shall be held liable for any violation of this Chapter.
- B. Each transaction or attempted transaction in which a Brick-and-Mortar Business fails to accept Cash shall constitute a separate violation of this Chapter.
- C. ~~Any violation of this Chapter shall be an infraction or misdemeanor punishable as hereinafter specified:~~ Where prompt compliance is not forthcoming, the City may issue an Administrative Citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary as specified below:
 - a. For a first violation, an infraction punishable by a fine not exceeding \$100 and not less than \$50.
 - b. For a second violation within a twelve month period, an infraction punishable by a fine not exceeding \$200 and not less than \$100.
 - c. For a third violation within a twelve month period, an infraction punishable by a fine not exceeding \$1,000 and not less than \$500.

9.50.060 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase of this Chapter, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King, Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the Mayor

04

ACTION CALENDAR

July 23, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Cheryl Davila, Kate Harrison, Rigel Robinson

Subject: Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance

RECOMMENDATION

Adopt a first reading of the Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.

BACKGROUND

Structural barriers faced by formerly incarcerated people continue to exist, with the stigma of incarceration blocking housing opportunities for many. A lack of access to stable housing increases the risk of recidivism, furthering the cycle caused by an inequitable criminal justice system. A 2019 survey by UC Berkeley's Goldman School for Public Policy found that a third of formerly incarcerated Alameda County residents had experienced homelessness or housing insecurity, and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record.

Multiple jurisdictions across the country, including regional neighbors such as San Francisco and Richmond, have passed a Fair Chance Ordinance, which prohibits landlords from prohibiting tenancy based on an individual's criminal history. The Berkeley Housing Element calls for the creation and enforcement of fair housing laws.

In October 2018, the City Council unanimously approved a referral to the City Manager and the 4x4 Committee to establish a Fair Chance Ordinance. The 4x4 Committee discussed this during their meetings in May and June 2019, in consultation with the Alameda County Fair Chance Housing Coalition, the Just Cities/the Dellums Institute for Social Justice, and various stakeholders. The Committee took the following action at its June 3rd meeting:

M/S/C (Arreguín/Davila) Recommendation to Council to support the proposed Fair Chance Ordinance with the following changes: (1) eliminate the ADU exemption; (2) add an education and training component; (3) rather than having separate standards for "private" vs. "publically subsidized" housing, differentiate between "publically subsidized/inclusionary" housing (including privately owned below market rate units) and "private non-inclusionary" housing; (4) specify the level of detail (in addition to existing state law requirements) that must be provided in written explanations for

housing denials; (5) any provision (to the extent allowed by law) requiring certain housing providers that violate the ordinance to offer the next available unit to the applicant should state that the unit must be comparable (in rent, size, condition, amenities/accommodations, etc.) to the unit that was denied, and must be available within a reasonable timeframe. Carried 7-0-0-1. Absent: Tregub.

The proposed Ordinance would prohibit landlords from advertising or using a policy that automatically excludes people with criminal histories from rental housing; asking about or requiring disclosure of someone's criminal history; or taking adverse action against an applicant or tenant based on his or her criminal history. Exceptions would be made to single-family dwellings where the owner occupies the dwelling, and for federally assisted housing complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history.

FINANCIAL IMPLICATIONS

Unknown

ENVIRONMENTAL SUSTAINABILITY

Not applicable

CONTACT PERSON

Mayor Jesse Arreguin 510-981-7100

Attachments:

- 1: Ordinance
- 2: Alameda County Fair Chance Housing Coalition Memo

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The Ronald V. Dellums Fair Chance Housing Public Health & Safety Ordinance
June 21, 2019

To be inserted in the Berkeley Municipal Code

I. Title

This Ordinance shall be known as the “Ronald V. Dellums Fair Chance Access to Housing and Public Health and Safety Ordinance.”

II. Authority

This Ordinance is adopted pursuant to the powers vested in the City of Berkeley under the laws and Constitution of the State of California and the City Charter.

III. Findings

- (a) The City of Berkeley is committed to equity, dignity, and public health and safety.
- (b) The unmet housing needs of formerly incarcerated people in Berkeley are an acute challenge to the dignity, public health and safety, and equal opportunity for this population and the broader community.
- (c) Research has found that access to housing reduces recidivism, and the lack of housing can be a significant barrier to successful reintegration after incarceration.
- (d) Homelessness is a critical issue in Berkeley and formerly incarcerated people are disproportionately affected by homelessness. Recent surveys reflect the direct correlation between housing barriers for formerly incarcerated people and homelessness. In a 2019 survey conducted by the Goldman School for Public Policy at UC Berkeley of formerly incarcerated Alameda County residents, one third of formerly incarcerated residents surveyed had experienced homelessness or housing insecurity and 54% had been denied either housing or the opportunity to live with a family member because of their criminal record. Another 2019 Goldman Survey of unhoused people residing in East Bay homeless encampments found that 72% of encampment residents surveyed had been formerly incarcerated. In the 2017 Point in Time count for Berkeley homeless residents, one of the top six reasons listed for the primary cause of homelessness was incarceration (6% of respondents).
- (e) Research and community engagement by the Alameda County Fair Chance Housing Coalition and Just Cities/the Dellums Institute for Social Justice have identified a policy gap in the city’s treatment of housing providers and their consideration of past convictions that has generated unfair and harmful barriers to housing for people with past convictions.

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- (f) Several jurisdictions, including Cook County, Illinois; Urbana, Illinois; Madison, Wisconsin; New York, New York; Richmond, California; San Francisco, California; Newark, New Jersey; and Seattle, Washington have passed policies that restore rights and remove barriers to housing for people with past criminal convictions.
- (g) On or about April 4, 2016, the United States Department of Housing and Urban Development issued the “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” in which it states that “Policies that exclude persons based on criminal history must be tailored to serve the housing provider’s substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.”
- (h) It has been documented by service providers providing assistance to formerly incarcerated residents in Alameda County and national researchers that significant first source housing for people coming out of incarceration is publicly subsidized affordable housing. {See Corinne Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, *Taking Stock: Housing, Homelessness and Prisoner Re-Entry* (2004); and *Every Door Closed: Barriers Facing Parents With Criminal Records*, CLASP and CLS Report (Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”).}
- (i) Alameda County service providers and national researchers have documented barriers to access to both private rental and publicly subsidized affordable housing faced by formerly incarcerated residents. {See Corinne Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 University of Toledo Law Review 545; Caterina Gouvis Roman and Jeremy Travis, Urban Institute, *Taking Stock: Housing, Homelessness and Prisoner Re-Entry* (2004); and *Every Door Closed: Barriers Facing Parents With Criminal Records*, CLASP and CLS Report (Chapter 3, “Criminal Records and Subsidized Housing: Families Losing the Opportunity for Decent Shelter”).}
- (j) The City of Berkeley’s Housing Element advances fair housing goals. The City Council in 2018 adopted a resolution supporting the development of a Fair Chance Housing policy.
- (k) Not having a home can prevent a formerly incarcerated person from getting a job, from visiting with his or her children, and from fulfilling other needs that are fundamental to reintegrating with community after incarceration.
- (l) Mass incarceration is a national crisis and restoring the rights of people affected by mass incarceration is a national priority.

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- (m) The United States incarcerates more than twenty-five percent (25%) of the world's prisoners while the country comprises only five percent (5%) of the world's population.
- (n) The City of Berkeley has shown a consistent interest in removing barriers faced by people coming home from incarceration, by adopting policies like the city's "Ban the Box" resolution, which removed barriers to employment.
- (o) According to the City of Berkeley's 2015-2023 Housing Element, there are a total of 25,696 rental housing units.
- (p) The Fair Chance Housing ordinance is rightly named after former Berkeley City Councilmember, Congressperson, Oakland Mayor, and global humanitarian Ronald V. Dellums who passed away in July 2018. For over fifty years, Ron Dellums practiced courageous and principled leadership to advance the human rights and needs of all peoples, especially those who have been discriminated against and marginalized. He was born in 1935 and grew up in a segregated West Oakland. He had a troubled youth and almost did not graduate from high school. After serving in the Marines, Ron Dellums became a UC Berkeley trained psychiatric social worker and a community organizer. At the age of 31, Dellums was on his way to a PhD program at Brandeis when he was recruited by activists to serve on the Berkeley City Council.

As Berkeley City Councilmember from 1967 to 1970, Ron Dellums championed progressive values of anti-war, peace, and justice including opposition to the death penalty, development of the People's Park and opposition to the declaration of martial law by then Governor Ronald Reagan, and successfully forcing BART to put train tracks in Berkeley underground.

As Congressperson representing Berkeley and Oakland from 1970 to 1997, Ron Dellums was the first African American to represent the district and one of the first Democratic Socialists in Congress. He was elected to Congress as an anti-Vietnam War activist and a prominent member of President Nixon's infamous "enemies list." Yet, he rose to become Chair of the powerful House Armed Services Committee, while maintaining his integrity, activism, and principles. Decades ahead of the "mainstream," his initially lonely efforts against Apartheid in South Africa, and against the major nuclear war-fighting systems, all eventually became the official positions of the nation. He was a staunch critic of discrimination in the military, a key supporter of gay rights in the military, and consistently challenged the militarization of U.S. foreign policy, while advocating for improving the living conditions of military personnel. Ron Dellums also chaired the House DC Committee where he pushed for meaningful Home Rule and Statehood for the District of Columbia, and also focused on the problems in America's cities. He was equally well known for presenting comprehensive policy proposals including the Dellums Alternative Military Budget and the Congressional Black Caucus Alternative Budget. He authored comprehensive bills to provide free healthcare to all Americans, a national comprehensive housing program, and climate change legislation.

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After leaving Congress, Dellums led the development of his envisioned Marshall Plan for HIV/AIDs resulting in the federal PEPFAR programs which has saved 17 million lives in Sub-Saharan Africa, and the Dellums Commission on Boys and Men of Color, the precursor to President Obama's My Brother's Keeper initiative.

Already in his 70s, Ron Dellums was drafted to serve as Mayor of Oakland from 2007 to 2010, where he opened up City Hall for Oakland's people to develop Oakland as a model city for the world. To institutionalize civic engagement, Ron Dellums created 41 Citizen Task Forces that involved over 800 residents and resulted in policy changes such as the adoption of an industrial lands policy to facilitate economic development and jobs for Oakland residents and strategies to improve air quality from Port operations. He created a Re-Entry Services program out of the Mayor's office that welcomed formerly incarcerated residents home and helped them find jobs, housing, and support. Ron Dellums developed a comprehensive public safety plan which resulted in a 38% decline in homicides and a 25% decline in all Part I (major) crimes. He reformed the Oakland Police Department and advanced community and constitutional policing. He led unprecedented City efforts involving business, labor, education, and community leaders to develop a comprehensive vision for a sustainable and equitable local economy, which resulted in \$550 million of new funding for projects and the generation of over 14,000 jobs during the Great Recession.

By naming the Fair Chance Housing Ordinance after Ronald V. Dellums, we seek to inspire community youth to believe in their potential for greatness and government officials to lead with courage, integrity, compassion for the most marginalized, and big vision for justice.

IV. Definitions

For the purposes of this Article, the following words and phrases shall mean and include:

- (a) "Adverse Action" shall mean to fail or refuse to rent or lease Housing to an individual; fail or refuse to continue to rent or lease Housing to an individual; fail or refuse to add a household member to an existing lease for Housing; to reduce the amount or term of any tenant subsidy for Housing; to treat an individual differently from other applicants or tenants such as requiring higher security deposit or rent; or to treat an individual as ineligible for a tenant-based rental assistance program, including, but not limited to, the Section 8 tenant-based voucher program (42 U.S.C. Section 1437f).
- (b) "Affordable Housing" shall mean any Housing that (i) has received or is receiving City, County, State, or Federal funding, tax credits, or other subsidies connected in whole or in part to developing, rehabilitating, restricting rents, subsidizing ownership, or otherwise providing rental housing for extremely low income, very low income, low income, and moderate income households (collectively, "Public Funding"), with the exception of Housing where the only Public Funding received is in the form of a Local, State or Federal tenant-based voucher, such as through the Section 8 tenant-based voucher program (42 U.S.C.

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Section 1437f); or (ii) is subject to affordability and related requirements pursuant to the City’s Below Market-Rate Rental Housing Program, including, but not limited to, the Inclusionary Housing Ordinance (BMC Chapter 23C.12), the Affordable Housing Mitigation Fee Ordinance (BMC Chapter 22.20), the State Density Bonus law (California Government Code Sections 65915-65918 and BMC Chapter 23C.14), and the Low Income Inclusionary Live/Work Units Ordinance (BMC 23E.20.080).

Commented [LS1]: Exception for Section 8 landlords with no other public subsidies.

- (c) "Affordable Housing Provider" shall mean any Housing Provider that owns, master leases, manages, or develops Affordable Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Housing Providers, and any government agency, including, but not limited to, the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), shall also be considered an "Affordable Housing Provider".
- (d) "Applicant" shall mean a person who seeks information about, visits or applies to rent or lease Housing, who applies for a tenant-based rental assistance program, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), who seeks to be added as a household member to an existing lease for Housing or, with respect to any Criminal History that occurred prior to the beginning of the person's tenancy, who currently rents or has a lease for Housing.
- (e) "Arrest" shall mean a record from any jurisdiction that does not result in a Conviction and includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for investigation by a law enforcement, police, or prosecutorial agency and/or charged with, indicted, or tried and acquitted for any felony, misdemeanor or other criminal offense.
- (f) "Background Check Report" shall mean any report regarding an Applicant’s Criminal History, including, but not limited to, those produced by the California Department of Justice, the Federal Bureau of Investigation, other law enforcement agencies, courts, or by any consumer reporting or tenant screening agency.
- (g) "Conviction" shall mean a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor or other criminal offense and for which the person placed on probation, fined, imprisoned and/or paroled.
- (h) "Criminal History" shall mean information transmitted orally or in writing or by any other means, and obtained from any source, including, but not limited to, the individual to whom the information pertains, a government agency or a Background Check Report, regarding: one or more Convictions or Arrests; a Conviction that has been sealed, dismissed, vacated, expunged, sealed, voided, invalidated, or otherwise rendered inoperative by judicial action or by statute (for example, under California Penal Code sections 1203.1 or 1203.4); a determination or adjudication in the juvenile justice system; a matter considered in or

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processed through the juvenile justice system; or participation in or completion of a diversion or a deferral of judgment program.

- (i) "Housing" shall mean any residential rental housing, building, or unit in the City of Berkeley, with the exception of single family dwellings where the owner occupies the dwelling as his/her principal residence.
- (j) "Housing Provider" shall mean any Person that owns, master leases, manages, or develops Housing in the City. Any agent, such as a property management company, that makes tenancy decisions on behalf of the above-described Persons, and any government agency, including, but not limited to, the Berkeley Housing Authority, that makes eligibility decisions for tenant-based rental assistance programs, including, but not limited to, the Section 8 program (42 U.S.C. Section 1437f), shall also be considered a "Housing Provider".
- (k) "Inquire" shall mean engage in any direct or indirect action, written or oral, intended to gather information from or about an Applicant for Housing using any mode of communication, including, but not limited to, application forms, interviews, and Background Check Reports.
- (l) "Person" shall mean one or more individuals, partnerships, organizations, trade or professional associations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, or any political or civil subdivision or agency or instrumentality of the City.

V. Use of Criminal History in Housing Decisions

- (a) A Housing Provider shall not, at any time or by any means, inquire about, require disclosure of, or, if such information is received, base an Adverse Action in whole or in part on an Applicant's Criminal History.
- (b) It shall not be a violation of this Ordinance for a Housing Provider to comply with specific Federal or State laws that apply to the particular transaction at issue and that require the Housing Provider to treat an Applicant as ineligible based on Criminal History, *e.g.* Ineligibility of Dangerous Sex Offenders for Admission to Public Housing (42 U.S.C. Sec. 13663(a) and Ineligibility of Individuals Convicted for Manufacturing Methamphetamine on Premises of Federally Assisted Housing for Admission to Public Housing and Housing Choice Voucher Programs (24 C.F.R. Sec. 982.553)), provided that if such a requirement applies, the Housing Provider shall not inquire about, require disclosure of, or, if such information is received, review an Applicant's Criminal History until the Housing Provider has first:
 - (1) Determined that the Applicant is qualified to rent the Housing under all of the Housing Provider's criteria for assessing Applicants except for any criteria related to Criminal History; and
 - (2) Provided to the Applicant a conditional lease agreement that commits the Housing to the Applicant as long as the Applicant meets the Housing Provider's Criminal History criteria.

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- (c) If and when the Housing Provider requests written consent from the Applicant to obtain a Background Check Report regarding Criminal History as permitted under subsection (V)(b) above, the Housing Provider must also request consent to share the Criminal History record with the Applicant and with the City of Berkeley (only for the purposes of addressing a complaint by an Applicant), and must provide the Applicant offer the Applicant an opportunity to provide evidence of inaccuracy of information in the Criminal History record.

VI. Requirements for Housing Providers

- (a) Housing Providers shall state in all solicitations or advertisements for the rental or lease of Housing that the Housing Provider will consider for tenancy any qualified Applicant regardless of the Applicant's Criminal History except in the very limited circumstances required by State or Federal law.
- (b) It shall be unlawful for any Housing Provider to produce or disseminate any advertisement related to Housing that expresses, directly or indirectly, that any person with Criminal History will not be considered for the rental or lease of real property or may not apply for the rental or lease of real property, except as required by State or Federal law.
- (c) The City shall publish and make available to Housing Providers, in English, Spanish, and Chinese and all languages spoken by more than five percent (5%) of the City's population, a notice suitable for posting that informs Applicants for Housing of their rights under this Ordinance. The notice shall contain the following information:
- (1) A description of the restrictions and requirements of this Act;
 - (2) Instructions for submitting a complaint to the City regarding a violation of this Ordinance; and
 - (3) Information about community resources available to assist an Applicant in connection with a violation of the Ordinance.
- (d) Housing Providers shall post the notice described in subsection (VI)(c) prominently on their application materials, websites and at any locations under their control that are frequently visited by Applicants.
- (e) Housing Providers shall comply with all applicable Federal, State, and Local fair credit reporting and tenant screening laws and regulations regarding the provision of written notices to Applicants, including, but not limited to, the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), the California Consumer Credit Reporting Agencies Act (California Civil Code Section 1785 et seq.), and the California Investigative Consumer Reporting Agencies Act (California Civil Code Section 1786 et seq.).
- (f) In addition to the requirements in subsections (VI)(a)-(e) above, Affordable Housing Providers shall also:

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(1) Provide any Applicant subject to an Adverse Action a written notice regarding the Adverse Action that includes, at a minimum, the reason(s) for the Adverse Action; instructions regarding how to file a complaint about the Adverse Action with the City, including applicable deadlines as set forth in subsection (VII)(d) below; a list of local legal services providers including contact information; and, if the Adverse Action is based in whole or in part on information in an Applicant's Criminal History, a copy of any Criminal History or Background Check Report obtained by the Affordable Housing Provider.

(2) Submit to the City an annual certificate of compliance with the requirements of this Ordinance in the form provided by the City.

VII. Implementation and Enforcement by the City

- (a) The Ordinance will take effect six months from the date of the passage of the Ordinance. In the six-month time period prior to implementation, Housing Providers are required to prepare and provide to all Applicants written policies compliant with this Ordinance that include, at a minimum, a description of the application process and of the City's complaint process.
- (b) The requirements of this Ordinance will apply to all new and existing Housing in the City. The terms of the Ordinance will be incorporated into all new and existing contracts between an Affordable Housing Provider and any entity providing Public Funding or that relate to the City's Below Market-Rate Rental Housing Program.
- (c) Within six months of the Ordinance's passage, the City Manager or designee is required to:
- (1) Promulgate appropriate regulations consistent with this Ordinance.
 - (2) Designate hearing officers and other necessary staffing for administrative review of complaints regarding violations of this Ordinance;
 - (3) Develop the timelines and procedures for complaints regarding violations of this Ordinance that include, at a minimum, the items described in subsection (d) below;
 - (4) Develop notices, the annual compliance certification form, and other implementation documents, including written materials for Housing Providers and potential Applicants;
 - (5) conduct outreach and prepare a plan to provide ongoing training about this Ordinance to Housing Providers;
 - (6) Prepare an annual implementation budget and identify funding sources; and
 - (7) Undertake other elements of effective implementation.
- (d) The City's administrative review process shall include, at a minimum, the following:
- (1) Any Applicant subject to an Adverse Action who believes the Adverse Action was based on a violation of this Ordinance shall have the right to submit a complaint to the City within one year of the date the Applicant submitted an application to the Housing Provider or the date of the violation, whichever is earlier. The City will

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complete its administrative review of any complaint, including the hearing and issuance of a final decision, within 90 days of submission of the complaint.

(2) During the City's administrative review of a complaint regarding an Adverse Action, the parties shall have the following rights: to have an advocate of their choosing to represent them at the hearing; to present any relevant witnesses and evidence and the evidence will be considered without regard to the admissibility under the Rules of Evidence applicable to a judicial proceeding; to examine the other party's evidence and to rebut and cross examine any witnesses; to request a translator; to request any reasonable accommodation needed to participate in the hearing process; and to record the hearing.

(3) Where the City determines that a violation of the Ordinance has occurred, the City shall issue a determination and order any appropriate relief under this Ordinance.

- (e) In addition to providing an administrative review process for complaints, the City is required to take appropriate steps to enforce this Ordinance and coordinate enforcement, including by investigating any possible violations of this Ordinance.
- (f) The City Manager or designee shall provide annual public reports to the City Council on the implementation and enforcement of this Ordinance. The annual reports shall include, at a minimum: information from the annual compliance certifications submitted by Affordable Housing Providers; the number of complaints filed with the City regarding violations of this Ordinance and the outcomes of such complaints, the number of notices filed with the City regarding private court action brought under the Ordinance and the outcomes of such court proceedings.

VIII. Private Right of Action

- (a) Applicants subject to Adverse Actions in violation of this Ordinance shall have a private right of action to enforce the Ordinance and shall, if they prevail, be entitled to: statutory damages equal to the greater of actual damages or three (3) times the amount of the monthly rent that the Housing Provider charged for the unit in question at the time of the violation; attorney's fees and costs of action; and punitive damages. This private right of action does not require an Applicant to have filed a prior complaint with the City of Berkeley.
- (b) An award of actual damages under this Ordinance may include an award for mental and/or emotional distress and/or suffering. The amount of actual damages awarded to a prevailing plaintiff shall be trebled by the Court if a defendant is found to have acted in knowing violation of, or in reckless disregard of, the provisions of this Ordinance.
- (c) In addition to any other award of damages or grant of injunctive relief, a court of competent jurisdiction may order that a civil penalty be assessed against the Housing Provider to vindicate the public interest, which penalty shall be payable to The City of

Commented [LS2]: This is from Berkeley's Source of Income ordinance.

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Berkeley. The civil penalty assessed against a Housing Provider shall be at least one thousand dollars (\$1,000) and shall not exceed ten thousand dollars (\$10,000) for each violation of the Ordinance. A defendant shall be liable for an additional civil penalty of up to five thousand dollars (\$5,000) for each violation of this Ordinance committed against a person who is disabled within the meaning of California Government Code section 12926, *et seq.*, or aged sixty-five (65) or over.

Commented [LS3]: From Berkeley's TPO

- (d) An attorney who represents an Applicant in litigation against a Housing Provider brought under this Ordinance shall provide notice to the City within ten (10) days of filing court action against the Housing Provider, and inform the City of the outcome of the court action within ten (10) days of any final judgment.

IX. Remedies

- (a) Any person who commits an act in violation of this Ordinance may be enjoined therefrom by any court of competent jurisdiction.
- (b) Where the City determines through administrative review of a complaint or otherwise that a violation of the Ordinance has occurred, the City shall, in order to vindicate the public interest, assess against the Person found to have violated the Ordinance a fine payable to The City of Berkeley in the amount of the lesser of \$1,000 or the maximum amount permitted under State and Local law.

Commented [LS4]: The amount of the fine was raised as a concern at the meeting with Rent Board staff. This issue needs input from the City Attorney.

X. Retaliation Prohibited

- (a) No person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance.
- (b) No person shall take any Adverse Action against any person because the person has exercised in good faith the rights protected under this Ordinance. Such rights include but are not limited to the right to fair chance housing and regulation of the use of criminal history in housing by this Ordinance; the right to make inquiries about the rights protected under this Ordinance; the right to inform others about their rights under this Ordinance; the right to inform the person's legal counsel or any other person about an alleged violation of this Ordinance; the right to file an oral or written complaint with the City for an alleged violation of this Ordinance; the right to cooperate with the City in its investigations of this Ordinance; the right to testify in a proceeding under or related to this Ordinance; the right to refuse to participate in an activity that would result in a violation of City, State, or Federal law; and the right to oppose any policy, practice, or act that is unlawful under this Ordinance.
- (c) No person shall communicate to a person exercising rights protected in this Ordinance, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an Applicant or a member of

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their household to a Federal, State, or Local agency because the Applicant has exercised a right under this Ordinance.

(d) There shall be a rebuttable presumption of retaliation if a Housing Provider or any other person takes an Adverse Action against a person within 90 days of the person's exercise of rights protected in this Section. The Housing Provider may rebut the presumption with clear and convincing evidence that the Adverse Action was taken for a permissible purpose.

(f) The protections afforded under this Ordinance shall apply to any person who mistakenly but in good faith alleges violations of this Ordinance.

(g) A complaint or other communication by any person triggers the protections of this Ordinance regardless of whether or not the complaint or communication is in writing or makes explicit reference to this Ordinance.

XI. Records to Be Maintained

(a) Housing Providers must maintain a record for each Applicant that includes any Criminal History obtained regarding the Applicant, and the determination of eligibility following any review by the Housing Provider of such Criminal History.

(b) Housing Providers shall maintain full and complete documentation of their compliance with this Ordinance.

(c) Housing Providers shall

- (1) Permit the City to have access to Housing Provider records for the purpose of making an audit, examination or review of performance data pertaining to this Ordinance; and
- (2) Maintain such records for a period of at least three years.

XII. Confidentiality

To the fullest extent permitted by law, any information pertaining to an Applicant's Criminal History obtained in conjunction with the rental, lease, ownership, or sublease process shall remain confidential and shall only be shared with individuals who have a need to know for the purpose of evaluating an Applicant's application for Housing.

XIII. Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

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XIV. Effective Date

This Ordinance becomes effective six (6) months after its final passage and adoption.

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Alameda County
Fair Chance Housing Coalition

June 20, 2019

To: City of Berkeley 4x4 Joint Task Force Committee on Housing

Fr: The Alameda County Fair Chance Housing Coalition: Policy and Outreach Leaders: Ms. Anita Wills with Essie Justice Group; **Ms. Sherry** with OCO, Our Beloved Community Action Network; **Taqwaa Bonner** and **Katie Dixon** with All of Us or None; **Coalition Advisors: Tamisha Walker** with the Safe Return Project, and **Deborah Thrope** and **Lisa Sitkin** with the National Housing Law Project. **Coalition Staff: John Jones III & Margaretta Lin** with Just Cities and the Our Beloved Community Action Network

Re: Updates on Proposed Policy Terms on Fair Chance Housing proposal

We remain grateful for your partnership to remove housing barriers faced by formerly incarcerated residents. The discussions we have had with you in Committee and individual meetings have helped us refine what we believe will be the nation's best Fair Chance Housing policy. In addition, we have had invaluable feedback from the Rent Board Executive Director and lawyers, and a former Deputy City Attorney for Oakland. In light of their feedback regarding implementation and enforcement considerations, we have made further refinements to the proposed Fair Chance Housing ordinance.

We look forward to working with Mayor Arreguin and the Berkeley City Attorney's office on any further modification needs to the proposed ordinance.

COALITION POLICY GOALS:

1. Remove current structural barriers faced by formerly incarcerated people when they apply for private or publicly subsidized housing to enable them to be considered on the merits of their present situation, rather than the albatross of their past.
2. Create a due process system that 1) enables formerly incarcerated people the ability to complain to the City and also sue to enforce their rights under the Ordinance; and 2) builds on the City's current administrative systems and capacity.
3. Design policy terms based upon an understanding of the different application and review processes by private and multiple kinds of Affordable Housing providers.
4. Create reporting requirements that are streamlined and also helps Affordable Housing providers transform their current application and review systems.
5. Avoid unintended consequences by not having burdensome or complex requirements for landlords.



MAIN PROPOSED POLICY TERMS: the following is a summary of the proposed fair chance housing policy for your consideration.

Housing Provider	Criminal Background Check	Due Process	Reporting to City	Potential Remedies for Violations
Private (Non-Affordable Housing Provider)	No	City Complaint Sue in Court	None	City complaint w/ fine OR City negotiation of next unit. Court action w/ damages or injunctive relief.
Publicly Subsidized, BMR & Not HUD Funded	No	City Complaint Sue in Court	Annual certification of compliance	City complaint w/ fine OR City negotiation of next unit. Court action w/ damages or injunctive relief.
HUD Funded	After conditional offer, can check on 2 crimes per HUD rules	City Complaint Sue in Court	Annual certification of compliance	City complaint w/ fine OR City negotiation of next unit. Court action w/ damages or injunctive relief.

- ❖ **NAMED AFTER RON DELLUMS:** The Coalition is proposing to name the Fair Chance Housing policy after former Berkeley City Councilmember, Congressman, Oakland Mayor, world humanitarian Ronald V. Dellums in honor of his legacy and to inspire policymakers across the nation to champion human rights.
- ❖ **PUBLIC POLICY RATIONALE:** California State law may pre-empt local jurisdictions from enacting local housing anti-discrimination laws. However, local jurisdictions are able to enact public health and safety laws. There is substantive and compelling research, data, and lived experience demonstrating the direct public health and safety impacts from restricting the access of formerly incarcerated residents to private and publicly subsidized rental housing. In addition, research and data also shows the direct connection between housing barriers for formerly incarcerated residents and homelessness.

CRIMINAL BACKGROUND CHECKS:

- The proposed ordinance for Berkeley prohibits ALL landlords from:
 - (a) Advertising or using a policy that automatically excludes people with criminal histories from rental housing,
 - (b) Asking about or requiring disclosure of someone’s criminal history, or
 - (c) Taking adverse action against an applicant or tenant based on his or her criminal history.
- Landlords also have to include in all advertising and application materials the information that they are not allowed to ask about criminal history or take adverse action on the basis of criminal history except in very limited circumstances.



- **Exceptions:**
 - (a) **Single-family dwellings where the owner occupies the dwelling** are exempt.
 - (b) **Landlords of federally assisted housing** have a partial exemption from the ordinance if they are complying with federal regulations that require them to automatically exclude tenants based on certain types of criminal history (lifetime sex offender registration requirement or making meth on a federally assisted housing property).

IMPLEMENTATION & ENFORCEMENT:

1. **Private Rental Housing Application & Complaint Process**

- **Denial:** If an applicant has been denied housing, they are entitled to any notices required by state and federal law and can also request that the landlord provide a reason for the denial.
- **Due Process, Remedies & Enforcement—See below**

2. **Affordable Housing Rental Housing Application and Appeal/Complaint Process**

- **Definition:** any housing provider receiving direct local, county, state, or federal subsidy, including **private developers with units in Berkeley’s BMR program**. We have removed Section 8 landlords from the definition of Affordable Housing provider since the Housing Authority conducts the background checks for Section 8 voucher holders and because Berkeley’s source of income anti-discrimination law potentially makes every landlord a Section 8 landlord.
- **Conditional Offer, Background Check, and Denial:** For federally funded housing providers, after a conditional offer of housing has been provided, the housing provider may conduct a background check if required by federal requirements. The housing provider must provide in writing the grounds for denial of housing and state whether a criminal records background check was conducted and, if so, what the results were of the check.
- **The Viability of Holding Units Open:** Our original proposal required that Affordable Housing providers hold their units open up to 30 days if an applicant files a complaint within 14 days of receiving a denial. However, after important information from Rent Board staff, we realize that it is not possible for someone to file a complaint with the City and to both hold a hearing and have a determination issued within 30 days. Given this reality and the potential impact to other applicants if we required that housing units be held open for 60 or 90 days, the Coalition has decided to remove the



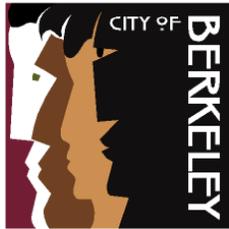
requirement of holding units open. Instead, for complaints filed with the City and a City determination of a violation, we strongly encourage the City to waive the fine and instead negotiate for the next available comparable unit as the fair remedy.

- **Annual Reports:** the housing provider must submit an annual certification of compliance to the City utilizing a City template. The Coalition would like to work with the City on designing the compliance template.

3. Due Process, Remedies and Enforcement for Both Private & Publicly Subsidized Rental Housing

- **Complaint Process:**
 - The applicant would have the right to file a complaint with the City's Rent Board within **one year** from the date of application for housing.
 - The public and complainant would be informed of available City or community resources to assist in the filing of the complaint or preparing for the hearing, including the gathering of evidence.
- Similar to current Berkeley tenant law, **private right of action and attorney's fees** for the prevailing applicant are provided.
- Berkeley's current **civil penalty system** is also integrated into the proposal.
- **Landlord retaliation** is explicitly prohibited.
- Landlords are required to maintain **documentation** of any conviction history that they obtain on applicants for at least three years.
- **Effective date** of the ordinance is 6 months after its adoption.
- The City Manager or their designee would provide an **annual status report** to the City Council and public including: a) which Affordable Housing providers submitted an annual certification of compliance; b) number of complaints filed with the City and the resolution; c) information from local service providers and community organizations on the number of court cases filed and the resolution or other compliance information.

CONTACT: John Jones III, Community + Political Engagement Director, Just Cities, john@justcities.work; Margaretta Lin, Managing Director, Just Cities, margaretta@justcities.work



Housing Advisory Commission

05

CONSENT CALENDAR
September 10, 2019

To: Honorable Mayor and Members of the City Council
From: Housing Advisory Commission
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission
Subject: Spring 2019 Bi-Annual Report on Funding for Housing Programs

RECOMMENDATION

Accept the Housing Advisory Commission's (HAC) recommendations for the allocation of U1 General Fund revenues to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

SUMMARY

This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts, Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs. In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

FISCAL IMPACTS OF RECOMMENDATION

The funds to pay for these recommendations come from a special Business License tax that is charged on properties consisting of five or more units. It is estimated that the revenues will total approximately \$5 million during the upcoming fiscal year. Staff time is included within the administrative costs listed in the summary table of proposed allocations.

CURRENT SITUATION AND ITS EFFECTS

At the May 2, 2019 meeting, the HAC took the following vote to adopt the Bi-Annual Housing Policy Report Subcommittee recommendations to Council, as amended by Commissioner Johnson, to Council to allocate \$5 million in General Fund revenue as follows:

Small Sites/Community Land Trusts	\$1,000,000
Housing Trust Fund	\$2,500,000
Development of New Housing Programs (Housing Co-Ops, Land Trusts)	\$250,000
Anti-Displacement	\$900,000
Administrative Costs	\$350,000
Total (2019)	\$5,000,000

M/S/C (Wright/Tregub):

Ayes: Johnson, Lewis, Sargent, Sharenko, Tregub, Wolfe and Wright. Noes: Lord.
Abstain: None. Absent: Owens (unexcused) and Simon-Weisberg (excused).

BACKGROUND

Ballot Measure U1 charged the Housing Advisory Commission with providing annual or bi-annual recommendations to the City Council on “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts, Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs.

In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report, since the City does not know at this time the locations of the housing units to be assisted.

RATIONALE FOR RECOMMENDATION

The actions recommended by the HAC are consistent with Berkeley’s existing housing programs and policies. Recommended expenditures support existing programs and potential new programs to be explored, such as alternative forms of housing ownership.

ALTERNATIVE ACTIONS CONSIDERED

Another option for the City to consider would be to deposit all U1 General Fund Revenues into the City’s Housing Trust Fund (HTF). However since one of the uses of

U1 General Fund Revenues is to protect Berkeley residents from homelessness, the HAC decided not to deposit all the funds into the HTF in order to provide revenues for anti-displacement activities. In addition, U1 General Fund Revenues are, by definition, more discretionary than other funds deposited into the HTF. This will allow the City to assist innovated programs needed given the housing affordability crisis.

CITY MANAGER

The City Manager recommends referring these recommendations to a Council Policy Committee for further discussion.

The City Council has already authorized General Fund revenue received pursuant to Measure U1 for the following projects:

- \$150,000 to the Berkeley Unified School District as a planning grant for educator housing;
- \$368,000 for Resources for Community Development predevelopment loan application for its proposed development at 2001 Ashby Avenue;
- \$900,000 for anti-displacement activities each year for FY20 and FY21; and
- \$100,000 capacity building for housing cooperatives each year for FY20 and FY21.

At the time of the writing Resources for Community Development has applied for an additional \$1.2M for a predevelopment loan for its proposed development at 2001 Ashby Avenue.

CONTACT PERSON

Mike Uberti, Commission Secretary, HHCS, (510) 981-5114

Attachments:

- 1: Spring 2019 Revised Draft Bi-Annual Report
- 2: Housing Revenues and Expenditures
- 3: Future Program Recommendations in Development by the HAC
- 4: Funding Summary Table as of May 2, 2019

To: Members of the Housing Advisory Commission
From: Xavier Johnson, Chairperson, Housing Advisory Commission
Subject: Spring 2019 Revised Draft Bi-Annual Report
Date: April 25, 2019

RECOMMENDATION

In keeping with the Housing Advisory Commission’s (HAC) annual/biannual obligation to “make recommendations...to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness,” this Report recommends the City of Berkeley allocate \$5 million in general fund revenue as follows:

● Small Sites/Community Land Trusts	\$1,000,000
● Housing Trust Fund	\$2,500,000
● Development of New Housing Programs (Housing Co-Ops, Land Trusts)	\$250,000
● Anti-Displacement	\$900,000
● Administrative Costs	\$350,000
<u>Total (2019)</u>	<u>\$5,000,000</u>

Further information on how the City of Berkeley should establish programs to increase the supply of affordable housing and protect Berkeley residents from homelessness will follow in future reports to the Berkeley City Council.

SUMMARY

The City of Berkeley (City) is currently experiencing a major shortfall in funding for affordable housing for its residents, and many existing residents find that they are unable to keep up with rising rents and may face displacement from their current homes. The purpose of U1, a ballot measure that passed by a majority of Berkeley’s residents in November 2016 was to increase funding for these two vitals areas (increasing the supply of affordable housing and preventing displacement). However, since these funds are part of the General Fund, the City actually has the option of spending them on non-housing related expenditures.

Measure U1 charged the Housing Advisory Commission with providing annual or bi-annual recommendations to the City Council on “how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.” This report is the first Bi-Annual Report in 2019 that the HAC is submitting to the Council. The expenditure of \$5 million dollars of discretionary funds recommended in this Report (Small Sites/Community Land Trusts,

Housing Trust Fund, and Development of New Housing Programs) is broad enough to be useful for existing, proposed, and future housing programs.

In late 2019 or early 2020, the Housing Advisory Commission will submit a second bi-annual report. This forthcoming report will, to the extent feasible, report on the actual expenditures and commitments of funds for 2019, as well as lay out a clear, structured, and goals oriented process as to how the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

FISCAL IMPACTS OF RECOMMENDATION

This report recommends the allocation of \$5 million dollars in General Fund revenue. It is acknowledged that the City has already, in some cases temporarily and in other cases indefinitely, committed various sources of revenue to various projects. To truly be able to maximize the allocation and effectiveness of resources this recommendation suggests the City will have to take into account all available funding sources and commitments made by the City; this will ensure there are no more additional unfunded commitments moving forward.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley continues to be in the midst of a major housing crisis. U1 directed the Housing Advisory Commission to look at all possible avenues and strategies the City can take to increase the supply of affordable housing and protect Berkeley residents from homelessness.

BACKGROUND

This report provides the following information:

1. *History*
The history of Measure U1, as well as the previous reports the Housing Advisory Commission has issued.
2. *Current Funding for Affordable Housing and Prevention of Displacement:*
An approximate summary of expenditures and allocations for affordable housing and prevention of homelessness. While this list is subject to constant change, and the number of sources grows, this list offers some context and background on some of the many resources currently available to the City.

3. *Recommendations for 2019 Expenditures*

Recommendations for future expenditures for housing as well as potential programs and ideas, will be more thoroughly explored and evaluated by the Housing Advisory Commission as part of its regular business.

4. *Potential Future Recommendations under Consideration by the Housing Advisory Commission*

As part of our 2018 Work Plan, the HAC came up with numerous ideas for programs and funding that it is currently evaluating and reviewing. While the HAC is beginning to start the 2019 process, we thought it was important to review the ideas that are still in the works and under review.

1. *History*

Measure U1, which was passed in November 2016, authorized an increase in the Business License Tax charged on properties that consist of five or more residential units. In addition and separately, Measure U1 provided that the HAC will make recommendations on how and to what extent the City should establish and fund programs to increase the supply of affordable housing and protect residents of Berkeley from homelessness. After the measure passed, it was incorporated into Berkeley's Municipal Code. The HAC was required under measure U1 to provide a report to the City Council and specified that HAC make annual or bi-annual recommendations to the Council. The HAC has chosen to set as its timeline April and October as reporting dates for each year.

In its first annual report to the City Council in 2018, the HAC recommended funding at these levels for the following uses:

● Anti-Displacement	\$550,000
● Small Sites Program	\$1,000,000
● Housing Trust Fund	\$2,000,000
● Reserve for pipeline housing programs	\$400,000
● Administrative Costs	<u>\$50,000</u>

Total	\$4,000,000
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This report is the second report to the City Council and is the first Bi-Annual Report for 2019. It provides information to the City Council to assist the Council in its decision-making regarding the allocation of funds to increase the supply of affordable housing and protect residents of Berkeley from homelessness.

2. Current Funding for Affordable Housing and Prevention of Displacement

The City of Berkeley has a number of sources of funding available to expand the supply of affordable housing and prevent homelessness. The subcommittee decided it would be good to understand the overall level of funds designated for affordable housing and homelessness prevention. First, Table 1 provides information on the most recent commitments from General Fund revenue

Secondly, working with staff, the subcommittee obtained information on housing related expenditure and allocations from several local sources including General Funds, In-Lieu and Housing Mitigation Fees, and federal sources, such as HOME and CDBG. This information is summarized in Table 2 and more information on actual expenditures is presented in Attachment 1.¹ Finally Attachment 3 provides information on committed expenditures.

Table 1: Allocations²

	Allocation
COMMITTED EXPENDITURES	
<i>Anti-Displacement</i>	
FY 2018	
Eviction Defense (Rent Board)	\$300,000
Retention - East Bay Comm Law Center HHCS	\$250,000
Rapid Rehousing HHCS	\$100,000
<i>Subtotal</i>	<i>\$650,000</i>
FY 2019 EXPENDITURES	
Eviction Defense (Rent Board)	\$300,000
Retention - East Bay Comm Law Center HHCS	\$250,000
Rapid Rehousing HHCS	\$100,000
<i>Subtotal</i>	<i>\$650,000</i>
<i>STAFF AND ADMIN. FY 2018</i>	
Staff Position	\$150,757
Other Administrative Costs	\$199,243

¹ Note: The total HOME funds listed in Table 2 do not include funding for public services projects, planning and administration, public facilities, and all ESG, since these uses do not fall directly under the policy framework for U1. ESG is primarily used to help those who are already homeless.

²As of February 2019. Also, Table 1 does not include expenditures from ESG or City's matching funds for ESG. See tables in Attachment 1
Source: City Staff

Attachment 1: Spring 2019 Revised Draft Bi-Annual Report

Subtotal	\$350,000
<i>HOUSING</i>	
Future Small Sites Program Activities - HHCS	\$950,000
Organizational Capacity Building (BACLT)	\$50,000
Subtotal	\$1,000,000
TOTAL: COMMITTED AND ASSIGNED	\$2,650,000

Table 2: FY 2018-19 Committed and Reserved Funds for Housing

<i>Committed Housing Trust Funds</i>	<i>CDBG</i>	<i>Home</i>	<i>Local Funds (1)</i>	<i>Total</i>
Bridge/Berkeley Food & Housing			\$3,967,548	\$3,967,548
1638 Stuart St (BACLT Small Sites)			\$50,000	\$50,000
SAHA (Oxford Street)			\$25,000	\$25,000
SAHA/Grayson Apartments	\$876,000	\$1,020,827	\$598,173	\$2,495,000
Subtotal				\$6,537,548
<i>Development - Reserved</i>				
Bridge/Berkeley Food & Housing(2)				\$23,500,000
BACLT Small Sites			\$950,000	\$950,000
SAHA (2)				\$6,000,000
Subtotal				\$30,450,000
Total HOME Projects				\$813,509
Community Allocations for Housing Development and Rehab.				\$451,662
<i>Prevention of Displacement</i>				
FY 2018			\$650,000	\$650,000
FY 2019			\$650,000	\$650,000
Subtotal				\$1,300,000

<i>Staffing and Administration</i>				
Subtotal				\$350,000
TOTAL FUNDS COMMITTED AND RESERVED				\$39,902,719

- 1) Local funding sources include Housing Trust Funds, U1 and additional General Funds.
- 2) No sources indicated.

Finally, the City passed Measure O in Fall 2018. This measure authorized the City to issue up to \$135 million in bonds to be paid for by an increase in the property tax for 36 years. These bonds can be used “to fund housing for "low-, very low-, low-, median, and middle-income individuals and working families, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations," according to ballot language. These bonds have not yet been issued, so the future financial resources from this bond measure are not included in this report.3.

Recommendations for 2019 Expenditures

Table 3 provides the Housing Advisory Commission’s funding recommendations for 2019 designed to increase the supply of affordable housing and protect Berkeley residents from homelessness. It should be noted that there is some overlap. For example, funding for a small sites program could be provided by the Housing Trust Fund, and a small sites program could also be based on a land trust model. In addition, this is not intended to be an exhaustive list of the City’s expenditures for increasing the supply of affordable housing or for protecting residents from homelessness.

Table 3: 2019 Funding Recommendations

		% of Committed Funds
Anti-Displacement	\$900,000	18%
Administrative Costs	\$350,000	7%
Small Sites/Community Land Trusts	\$1,000,000	20%
Housing Trust Fund	\$2,500,000	50%
Development of New Housing Programs (Housing Co-Ops)	\$250,000	5%
Total (2019)	\$5,000,000	100%

4. Potential Future Recommendations under Consideration by the Housing Advisory Commission

As part of the 2018 work plan, the Housing Advisory Commission identified numerous potential programs, which it is in the process of evaluating and designing. Moving forward, the HAC may put some of these ideas forward to the City Council. The current nine members of the Housing Commission responded to a poll regarding some of the strategies/programs included in the most recent Work Plan.³ Table 4 presents poll results. The poll required a “yes” or “no” vote.

- The strategies supported by all commissioners included funds for the Housing Trust Fund and Community Land Trusts.
- Those strategies supported by almost all of the Commissioners included anti-displacement services, expansion of the small sites program, and group equity/zero equity co-ops.
- Finally, home sharing and supportive mental health services received support from less than two-thirds of the Commissioners, but still a majority of the members.⁴

Since a majority of Commissioners supported all these activities/strategies, they represent a good starting point for recommendations on how 2019/20 housing funds could be allocated. With the exception of home sharing and supportive mental health services, three-quarters of the commissioners supported the other strategies listed in Table 4.

³ A more detailed description of these Work Plan recommendations can be found at [https://www.cityofberkeley.info/uploadedFiles/Housing/Commissions/Commission_for_Housing_Advisory/2018-7-11%20HAC%20Agenda%20Packet%20COMPLETE\(2\).pdf](https://www.cityofberkeley.info/uploadedFiles/Housing/Commissions/Commission_for_Housing_Advisory/2018-7-11%20HAC%20Agenda%20Packet%20COMPLETE(2).pdf)

⁴According to two commissioners who provided comments, mental health services are outside the auspices of the HAC and Housing Division. Another member indicated that they need more information in order to assess support for these services. Additional comments included in the poll results are included in Attachment 2.

Table 4: Commissioner Poll Results

Activities/Strategies	Percent Supporting
East Bay Community Law Center to help tenants who are at-risk of displacement (1)	88%
Supportive Mental Health Services to assist Residents who have housing remain housed (1)	63%
Expand Supply of Affordable Housing (Small Sites Program)	89%
Housing Trust Fund (for leveraging of new construction)	100%
ADU Development	78%
Tenant Option to Purchase	78%
Group Equity and Zero Equity Co-ops (1)	88%
Community Land Trusts	100%
Home Sharing	56%

(1) The percentage of HAC members supporting these three issues is based on responses from eight out of nine members of the HAC. One of the members did not vote on these three strategies, because the member indicated more information was needed to provide input.

Attachment 2: Housing Revenues and Expenditures

**Table 1.1:
February 2019 U1 Revenues**

FY 2018 Revenues	\$5,161,615
FY 2019 YTD Revenues	\$865,451
Total	\$6,027,066

Source: City of Berkeley

Table 1.2: February 2019 Committed Expenditures Preventing Homelessness

Use	Anti-Displacement FY18	Anti-Displacement FY19
Eviction Defense - Rent Board	\$300,000	\$300,000
Retention - East Bay Community Law Center - HHCS	\$250,000	\$250,000
Rapid Rehousing - HHCS	\$100,000	\$100,000
Total	\$650,000	\$650,000

Source: City of Berkeley

Table 1.3: February 2019 Committed Expenditures Increasing Housing Supply

Future Small Sites Program Activities – HHCS (not yet provided)	\$950,000
Organizational Capacity Building (BACLT Contract)	\$50,000
Sub-Total	\$1,000,000

Source: City of Berkeley

Table 1.4: Staff and Administrative Costs Funded by the General Fund

Finance Development Spec II Position - FY18	\$150,757
Other Administrative Costs - Fin FY18	\$199,243
Sub-total	\$350,000

Table 1.5: HOME Projects Allocations FY 2018-2019

HOME Admin.	\$81,351
CHDO Operating Funds	\$28,115
Housing Trust Fund	\$704,043
Subtotal HOME Projects FY 2018-2019	\$813,509

Source: City of Berkeley Annual Action Plan. (Does not include all funding)

Attachment 3: Future Program Recommendations in Development by the HAC

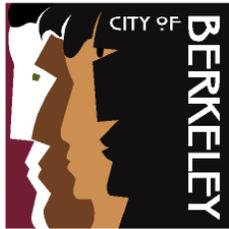
Additional comments written on the Commissioner's Poll include the following:

- Small Sites Program - Perhaps use funds for organizational/program development minor support rather than support for purchasing sites at this time. Developers that have experience in affordable housing development should only be considered given the financial risks of this type of development and the complexities of small scattered-site developments.
- Tenant Option to Purchase - This is good for apartment buildings that contain fewer than 20 units. This approach could be combined with the institutional structure of Community Land Trusts. CLTs are an important model that can be used to support these types of ownership structures.
- Group Equity and Zero Equity Co-ops - It is possible that those most interested in co-ops would be UC Berkeley students. Is this the City of Berkeley's priority given the transient nature of university students?
- Home Sharing - Assistance to a service organization like HIP Housing is a good idea, but this strategy is a service and not affordable housing development of new units. Also, the City should be very careful with supporting this type of service given potential for abuse by tenants and/or landlords.

Attachment 4: Summary Table as of May 2, 2019

	CDBG 2018-19	HOME 2018-19	Housing Trust Fund	Other	General Fund 2018-19	General Fund 2019-2020	No Source	Total
Committed-New Affordable Housing								
Bridge/Berkeley Food & Housing Project			\$3,967,548				\$23,500,000	\$27,467,548
SAHA (Oxford Street)			\$25,000					\$25,000
SAHA (Grayson Apartments)	\$876,000	\$1,020,827	\$598,173					\$2,495,000
SAHA (Oxford Street)							\$6,000,000	
Subtotal-New Affordable Housing	\$876,000	\$1,020,827	\$4,590,721				\$29,500,000	\$35,987,548
Committed-Preservation								
BACLT Small Sites Program (1638 Stuart St.)					\$950,000			\$950,000
BACLT Small Sites Capacity Building					\$50,000			\$50,000
Housing Development & Rehabilitation	\$380,613			\$56,230	\$14,819			\$451,662
Subtotal-Preservation	\$380,613			\$56,230	\$1,014,819			\$1,451,662
Home Projects Allocations (FY 2018-2019)								
Administration		\$81,351						\$81,351
CHDO Operating Funds		\$28,115						\$28,115
Housing Trust Fund			\$704,043					\$704,043
Subtotal Home Projects		\$109,466	\$704,043					\$813,509
Committed-Anti-Displacement								
Eviction Defense-Rent Board					\$300,000	\$300,000		\$600,000
East Bay Community Law Center					\$250,000	\$250,000		\$500,000
Rapid Re-Housing					\$100,000	\$100,000		\$200,000
Subtotal – Anti- Displacement					\$650,000	\$650,000		\$1,300,000
Administrative Overhead								
Finance Development Specialist II						\$150,757		
Other Administrative Costs						\$199,243		
Subtotal-Administrative Overhead						\$350,000		\$350,000

	CDBG 2018-19	Home 2018-19	Housing Trust Fund	Other	General Fund 2018-19	General Fund 2019-2020	No Source	Total
Total Funds Committed and Reserved	\$1,256,613	\$1,130,293	\$5,294,764	\$56,230	\$1,664,819	\$1,000,000	\$29,500,000	\$39,902,719



Office of the City Manager

06

CONSENT CALENDAR
September 25, 2018

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services
Subject: Disposition of City-Owned, Former Redevelopment Agency Properties at 1631 Fifth Street and 1654 Fifth Street

RECOMMENDATION

1. Adopt first reading of an Ordinance authorizing the sale of two City-owned, former Redevelopment Agency properties at 1631 Fifth Street and 1654 Fifth Street at market rate and deposit the proceeds in the City's Housing Trust Fund (HTF).
2. Direct the City Manager to issue a Request for Proposals to select a real estate broker to manage the sale.

SUMMARY

The City received two properties, a vacant lot and vacant single family home, that the Redevelopment Agency planned to sell prior to the statewide dissolution of redevelopment. The City Council previously approved the market rate sale of these properties as part of the state-mandated Long Range Development Management Plan adoption in 2014.

Neither site is large enough or zoned densely enough to support the cost-effective development and operation of affordable housing. Both properties would require investment of additional City funds before they could be used as housing. Selling the properties will yield a return on the City's Community Development Block Grant (CDBG) investment that will be applied to the City's priorities for permanent affordable housing via the Housing Trust Fund (HTF).

The sale of City properties requires City Council approval via ordinance. To maximize the number of interested buyers, staff are requesting Council authorization in advance of offering them for sale in the single family home market in lieu of requiring the buyer to wait for a sale contract to go to Council for approval.

FISCAL IMPACTS OF RECOMMENDATION

Staff estimate the combined sales may yield \$800,000 to \$1.5M, and that a broker's fee for selling them may be 3% of the sale price, or \$24,000 to \$45,000. The properties have not yet been appraised but will be during the sale process.

The properties were acquired with CDBG funds, which restricts revenue from their sales to CDBG-eligible uses. Staff recommend depositing the proceeds in the HTF so they can be used for CDBG-eligible housing activities including acquisition and rehabilitation. Staff will provide an information report following the sales to confirm the total contribution to the HTF.

CURRENT SITUATION AND ITS EFFECTS

The City owns two properties it received as the Successor Agency to Redevelopment: a 5,000 square foot vacant lot at 1631 Fifth Street and a vacant single family home at 1654 Fifth Street. The former Redevelopment Agency intended to sell both properties, but the process was halted due to redevelopment's dissolution statewide. Neither property has sufficient size or appropriate zoning to develop affordable housing efficiently, and any proposed affordable housing would be small scale and require additional City subsidies. The City also is incurring ongoing maintenance costs and liabilities while it holds the properties.

City staff consulted with legal counsel at Goldfarb & Lipman, LLP and the City Attorney's Office to review the applicability of the Surplus Lands Act to these former redevelopment agency properties. They concluded that process was not required and the properties could be sold at market rate. Given the relatively rapid pace of single family sales, staff are requesting the Council authorize the sale via ordinance prior to moving to market, and will provide an information report with the final revenue following the sales.

Staff are recommending the City issue an RFP to identify a local real estate broker with experience selling single family homes and small parcels. A private broker will have the expertise to manage single family sales (including marketing) and reach the broadest pool of Bay Area homebuyers.

At its July 11, 2018 meeting, the Housing Advisory Commission voted to support the staff recommendation:

Action: M/S/C (Owens/Amezcuca) to recommend to Council to approve the sale of two Successor Agency to Redevelopment properties at 1631 Fifth Street and 1654 Fifth Street at market value and deposit the proceeds in the Housing Trust Fund.

Vote: Ayes: Amezcua, Holman, Johnson, Kesarwani, Lewis, Owens, and Winters. Noes: Lord. Abstain: None. Absent: Tregub (excused), Wolfe (excused), and Wright (excused).

The possibility of using either of these properties in the Small Sites program was discussed at the July HAC meeting. An NCLT representative provided input on NCLT's past attempt to develop 1631 and inability to identify a feasible project, and, considering the additional investment of City funds that would be required for rehabilitation and development, it was determined that neither site is appropriate for this program.

BACKGROUND

Following the dissolution of all California redevelopment agencies, the Berkeley Redevelopment Agency prepared a state-mandated Long Range Development Management Plan (LRDMP) which the City Council, acting as the Successor Agency, adopted in 2014. The LRDMP included the recommendation to sell both sites at market rate. In 2015, for reasons related to Redevelopment law and the dissolution process, and acting at the direction of the State Department of Finance, the Redevelopment Agency’s Oversight Board removed these two properties from the LRDMP and listed them as housing assets to facilitate their disposition on the market.

The former Redevelopment Agency acquired these parcels with other acquisitions in this neighborhood between 1969 and 1971 as part of a larger "Neighborhood Development Program". The characteristics of each property are provided in *Figure 1*.

Figure 1. Property Characteristics

	1631 Fifth Street	1654 Fifth Street
Land Use	Vacant Lot	Vacant Single Family Home
Lot Area	5,525 sq ft	5,353 sq ft
Acres	0.13	0.12
Zoning	MU-R	MU-R/MULI

1631 Fifth Street

In 1983, the Redevelopment Agency demolished a residential building at 1631 Fifth Street to build new affordable housing, but abandoned the plans after discovering high levels of lead contamination. The lot has remained vacant since this time. In 1997, the Redevelopment Agency approved the remediation and development of the site, but the selected developer was unable to execute an agreement and the sale was never completed.

The Redevelopment Agency conducted an RFP for housing at the site in 2008, but the only response was Northern California Land Trust’s (NCLT) proposal to move the Kenney Cottage (now at 1281 University Avenue) to the site. This proposal did not come to fruition due to NCLT’s bankruptcy, but NCLT did manage a small community garden at the site from 2009 to 2011. Staff confirmed the use of 1631 as a community garden does not make it subject to the limitations of Measure L related to parks and open space.

1654 Fifth Street

Records for this property between 1969 and 1986 are not readily available. In 1987, the property was rented to low-income tenants. In 1993, the property was renovated and

the tenants were provided a new lease with an option to purchase after ten years. The tenants did not secure financing when the Redevelopment Agency provided the option to purchase in 2004. In 2006 and 2007, the Agency solicited proposals for non-profit affordable housing developers to determine the viability of sale, however response was limited. NCLT submitted an offer to purchase, but the Redevelopment Agency rescinded its offer to sell following NCLT's bankruptcy filing. In 2010, the tenants were relocated from the site. In 2011, the Redevelopment Agency began proceedings for a market-rate sale of the property, but was forced to abandon its efforts following the adoption of the redevelopment dissolution legislation. The house has remained vacant since this time.

Administration

When the Redevelopment Agency dissolved, the Department of Health, Housing and Community Services took over managing its housing assets and other remaining responsibilities on behalf of the Successor Agency, although no staffing was added to handle these responsibilities. Former Redevelopment Agency assets assumed include 13 homebuyer loans, two properties under long-term leases and these two sites. HHCS pays the Public Works Department to provide periodic landscaping services for these properties and has responded to issues identified by the Fire Department associated with the neighbor's storage of materials outside 1654. As long as the City owns the sites, it will retain these ongoing costs and liabilities.

ENVIRONMENTAL SUSTAINABILITY

There are no sustainability effects associated with the recommendation of this report.

RATIONALE FOR RECOMMENDATION

Both sites have been intended for sale since they were first acquired by the Redevelopment Agency in the late 1960s and early 1970s as part of a neighborhood development initiative. The City Council previously approved the market rate sale of these properties as part of the LRDMP adoption in 2015.

Neither site is large enough or zoned densely enough to support the cost-effective development and operation of affordable housing. Both would require investment of additional City funds before they could be used as housing, whether in the rehabilitation of 1654 or construction at 1631. Selling the properties will yield a return on the City's CDBG investment that will be applied to the City's affordable housing priorities via the Housing Trust Fund. In addition to the Berkeley Way development commitment, the HTF recently provided two other proposed developments predevelopment loans — Satellite Affordable Housing Associates' Oxford Apartments and Bay Area Community Land Trust's Stuart Street rehabilitation. Staff also received HTF inquiries related to other development activities.

A small single family home and small vacant lot are not typical government real estate assets, and are better suited for sales by a real estate broker familiar with these types of properties and the local market. Private brokers have the resources and knowledge

needed for single family sales (including marketing) and are likely to reach the broadest pool of Bay Area homebuyers. The City opted to select a local real estate broker, Korman & Ng, for its most recent single family home sale of 2931 Shasta Road (a former Fire Department house) in 2012.

ALTERNATIVE ACTIONS CONSIDERED

The City could consider:

- Retaining these properties for a future determination on their usefulness. Staff are not recommending this option due to the small size and location of these properties as well as the costs and liabilities associated with holding vacant properties.
- Leasing the single family home (1654) to an individual household at an affordable rate. Staff are not recommending this option since the City does not have residential property management staff. Hiring an outside property management firm would not be financially feasible for a single property. The house has only had minimal maintenance since at least 2010 and likely has deferred maintenance and, at a minimum, minor rehabilitation needs, which would require additional investment.
- Selling or leasing both properties to a housing organization for development and operation as affordable housing. Staff are not recommending this option because it would require additional investment of City funds which are needed for developments currently in the pipeline. Rehabilitating and operating housing at this scale is not efficient and cannot leverage much (if any) non-City funds. The Redevelopment Agency did not receive viable proposals for previous attempts to develop affordable housing. HHCS received inquiries related to leasing the vacant site for the placement of tiny homes for the homeless or other populations but is recommending the market rate sale with proceeds going in to the Housing Trust Fund in order to expand permanent affordable housing opportunities.

CONTACT PERSON

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5406

Mike Uberti, Community Development Project Coordinator, Health, Housing & Community Services, (510) 981-5114

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

AUTHORIZING THE CITY MANAGER TO SELL CITY-OWNED, FORMER REDEVELOPMENT AGENCY PROPERTIES LOCATED AT 1631 FIFTH STREET AND 1654 FIFTH STREET

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council finds as follows:

- a. The City acquired the properties at 1631 Fifth Street and 1654 Fifth Street via its role as the Successor Agency to the Redevelopment Agency of the City of Berkeley.
- b. The Redevelopment Agency planned to sell each site prior to the redevelopment dissolution legislation.
- c. The Successor Agency Oversight Board, acting at the direction of the State Department of Finance, designated each property as a housing asset to facilitate their sale.
- d. City Charter Article VIII, Section 44(7) requires the sale of public property shall be by City Ordinance.
- e. The sites' status as former Redevelopment properties enables the City to follow redevelopment law's disposition requirements for market rate returns, and exempts the City from the Surplus Land Act (AB 2135).
- f. These properties were acquired with Community Development Block Grant (CDBG) funds, which restricts revenue from their sales to CDBG-eligible uses, including the Housing Trust Fund.
- g. The General Plan's Housing Element Policy H-2 states the City should aggressively search out, advocate for, and develop additional sources of funds for permanently affordable housing, including housing for people with extremely low incomes and special needs.
- h. Selling the properties at market rate will maximize Housing Trust Fund contributions, and provide leverage for permanent affordable housing projects.

Section 2. The City Manager is hereby authorized to take to necessary actions to sell the real property located at 1631 Fifth Street and 1654 Fifth Street, including:

- a. Establishing a purchase price that shall be equal to or greater than the appraised market value of the each property.
- b. Depositing the proceeds of the sale into the Housing Trust Fund.

- c. Issuing a Request for Proposals to contract with appropriate real estate professionals to market and sell the each property.
- d. Upon consultation with the City Attorney, the City Manager, or her designee, will execute all necessary documents to engage a vendor and to sell the each property.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Kate Harrison
Councilmember District 4

ACTION CALENDAR
October 29, 2019

To: Honorable Mayor and Members of the City Council
From: Councilmembers Kate Harrison, Sophie Hahn, Cheryl Davila,
and Ben Bartlett
Subject: Inclusionary Units in Qualified Opportunity Zones

RECOMMENDATION

Adopt an ordinance amending Berkeley Municipal Code chapter 23C.12.035 requiring onsite inclusionary units in developments in Qualified Opportunity Zones (QOZs). Refer to the Adeline Corridor Subcommittee of the Planning Commission to consider how such a requirement would affect the Adeline Corridor Plan.

BACKGROUND

Qualified Opportunity Zones are urban areas associated with the 2017 Trump tax cuts.¹ The stated goal of QOZs is to incentivize investment in under-resourced urban areas by delaying capital gains taxes and circumventing altogether federal taxes on profits made in QOZs.² Ten years after an initial investment into a QOZ, the investor can sell the real estate and not owe any taxes on the profits. Investments in Qualified Opportunity Zones can increase an investor’s returns by 70%, according to the Congressional Research Service.³ Though touted as a way to invest in under-resourced communities, many of the QOZs are in rapidly growing areas, with 75% of the tracts experiencing significant economic growth between 2001 and 2015⁴ and 64% of tracts seeing a significant increase in new businesses during the same period.⁵ Also, in the Bay Area, QOZs are often in gentrifying areas, reflecting a national pattern: almost 70% of all neighborhoods in

¹ <https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html>

² *Ibid.*

³ https://www.novoco.com/sites/default/files/atoms/files/crs_tax_incentives_for_ozs_112018.pdf

⁴ <https://www.opportunityzonelaw.com/single-post/2018/07/03/Five-Keys-from-the-Novogradac-2018-Opportunity-Zones-Workshop>

⁵ *Ibid.*

America that gentrified between 2000 and 2017 either are in a Qualified Opportunity Zone or are adjacent to one.⁶

Five census tracts in Berkeley have been designated as Qualified Opportunity Zones, including Downtown, the Adeline Corridor and South Shattuck, South Berkeley between Sacramento and Shattuck, and part of West Berkeley between University and Dwight, San Pablo and 5th Street.⁷ The five census tracts⁸ in Berkeley are almost all low-income and predominantly Black communities and communities of color. They are as follows:

Berkeley Opportunity Zone Demographics

Tract Number	Bordering Streets	Poverty Rate	Average Income
4232	West Berkeley between University and Dwight; San Pablo and 5 th St	19.2%	\$81,453
4229	Downtown Berkeley between University and Dwight; Oxford and MLK	47.3%	\$52,250
4235	South Berkeley between Dwight and Ashby; Fulton and MLK	20.9%	\$62,386
4239.01	Southern end of Adeline Corridor	13.9% ⁹	\$90,882
4240.01	Southern Berkeley between Ashby and City Limits; Sacramento and Adeline	18.1%	\$60,809

Inclusionary Housing in Berkeley

The Berkeley Housing Trust Fund (HFT) was established in 1990 to pool money from a variety of sources (including developer in-lieu fees) into a single pot for the purpose of constructing affordable housing.¹⁰ From 2009¹¹ to 2017, localities were required by state law to offer project applicants the option of either building affordable units onsite or paying

⁶ <https://ncrc.org/oz/>

⁷ <https://opzones.ca.gov/oz-map/>

⁸ <https://www.arcgis.com/home/item.html?id=92e085b0953348a2857d3d3dac930337#visualize>

⁹ Please note that this poverty rate is too low to be considered a “low income census tract.”

¹⁰ <https://www.cityofberkeley.info/ContentDisplay.aspx?id=6532>

¹¹ http://www.reubenlaw.com/palmer_case_shakes_up_inclusionary_housing_rules_for_rental_projects/

the in-lieu fee. Thus, pursuant to BMC 23C.12, all new projects in Berkeley with five or more units are currently required to *either* set aside 20% of their units as affordable, pay an in-lieu fee to the HFT, or some combination of both.

AB 2502 (known as the “Palmer Fix”) passed in 2017 and gives jurisdictions the authority to require onsite units instead of giving developers the option to pay an in-lieu fee. The decision to charge in-lieu fees, require inclusionary units, or leave the decision to developers is now set according to prevailing market forces and the desires of local policymakers.¹² Berkeley traditionally incentivized paying in-lieu fees, because the HTF was under-resourced and other funding sources were not available. This approach allowed construction of entirely affordable buildings by non-profits but had several drawbacks:

- Constructing affordable housing projects using in-lieu fees requires capital to be accrued over many years and results in delays in production that market-rate developers may not face.
- Building affordable units in primarily market-rate developments promotes integration of housing throughout the City.
- The state density bonus requires projects to set aside 10% of units for very low income households (at 30-50% the area median income), but there are not comparable state incentives for units affordable to low income households (earning from 50%-80% of area median income). Thus, the majority of project applicants who invoke the state density bonus build 10% of their units to be affordable to very low income households and then pay the in-lieu fee for the remaining local obligation, which would otherwise be required to be built for low-income households. According to the 2019 Housing Pipeline Report, of the 56 market-rate developments currently in the pipeline, 24 elected to utilize the density bonus and pay fees in lieu of the other 10% of affordable units and an additional 21 did not take advantage of the state density bonus and paid in-lieu fees for all or substantial proportion of the requirement. In contrast, 11 projects provided all 20% affordable units onsite. Thus, 80% (24 plus 21 out of 56) paid fees in lieu of some of the required units. Of the 23 projects listed that are now in a Qualified Opportunity Zone, 11 had no onsite affordable units, and seven took advantage of the state density bonus (see attachment 2).
- As a result of these mismatched incentives, Berkeley has achieved only 15% of its low income housing target¹³ and 65% of the target set for very low income housing.¹⁴

¹² <http://inclusionaryhousing.org/designing-a-policy/off-site-development/in-lieu-fees/>

¹³ <https://abag.ca.gov/our-work/housing/rhna-regional-housing-need-allocation>

¹⁴ We see in the 2019 Housing Pipeline Report that Berkeley has achieved 65% of its Very Low Income housing goals, 15% of its Low Income housing goals, and 0% of both Extremely Low and Moderate Income goals.

- Since the passage of Measure O, much more funding for non-profit built affordable housing is available. It is critical, given the displacement occurring in Berkeley, to consider requiring some on-site units instead of providing the option of in-lieu fees.

Qualified Opportunity Zones are an ideal place to begin to require inclusionary on-site units. QOZs are intended to revitalize low-income communities, and requiring units affordable to lower-income households in these zones will prevent low-income individuals from being priced out of their own communities. Developers are given significant financial benefits under Opportunity Zones, and thus can include on-site units and still realize a profit.

FINANCIAL IMPLICATIONS

Will reduce contributions to the Affordable Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

The Qualified Opportunity Zones in Berkeley are along major transit corridors (Shattuck, Adeline, and San Pablo). Last year, Berkeley researchers concluded that infill housing along transit corridors is one of the most impactful policies municipalities can adopt to combat climate change.¹⁵

CONTACT PERSON

Councilmember Kate Harrison, Council District 4, (510) 981-7140

ATTACHMENTS

- 1: Ordinance
- 2: 2019 Housing Pipeline Report, highlighted with projects that are in Qualified Opportunity Zones as currently defined.

¹⁵ <https://rael.berkeley.edu/wp-content/uploads/2018/04/Jones-Wheeler-Kammen-700-California-Cities-Carbon-Footprint-2018.pdf>

AMENDING CHAPTER 23C.12.035 OF THE BERKELEY MUNICIPAL CODE TO
REQUIRE ON-SITE INCLUSIONARY HOUSING UNITS IN QUALIFIED
OPPORTUNITY ZONES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23C.12.035 is hereby amended to read as follows:

23C.12.035 Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units within a Project

A.

1. Applicability. As an alternative to providing inclusionary units required in an ownership project, the applicant may elect to enter in an agreement with the City to pay fees as set forth in this section, in-lieu of providing units that are not required to be provided at below market prices pursuant to Government Code Section 65915.

2. The contents of Section 23C.12.035 are not applicable to residential housing projects in Qualified Opportunity Zones

B. Purpose. The fee shall be deposited in the City's Housing Trust Fund.

C. Amount of Fee.

1. The in-lieu fee shall be sixty two and a half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amounts for which those units are actually sold by the applicant.

2. This fee shall be calculated and collected based on the sales prices of all of the units in a project to which the inclusionary requirement applies, such that the fee as charged shall be a percentage of the difference between the actual sales price for each unit, and the sales price that would have been permitted had that unit been an inclusionary unit. The percentage shall be determined using the following formula: the number of units for which an in-lieu fee is substituted for an inclusionary unit divided by the total number of units to which the inclusionary ordinance applies, multiplied by 62.5%.

3. This fee shall only be applicable to units in a project that are counted in determining the required number of inclusionary units in a project and shall not be applicable to any units provided as a density bonus.

4. In the event that the City Manager makes a determination that an actual sales price does not reflect the fair market value of a unit, the City Manager shall propose an alternate price based on the fair market value of the unit. In the event that the developer and the City Manager cannot agree on a fair market value the City Manager shall select an appraiser to carry out an appraisal of the unit and the appraised value shall be used as the market value.

D. Calculation of Inclusionary Sales Price.

1. The allowable inclusionary sales price for the purpose of calculating the in-lieu fee pursuant to this section shall be three (3) times eighty percent (80%) of the Area Median Income (AMI) last reported as of the closing date of the sale of the unit, with the exception that if the developer has already been authorized to charge an inclusionary sale price based on development costs pursuant to Ordinance 6,790-N.S. (adopted January 27, 2004, sunsetted February 19, 2006) the allowable inclusionary sale price for the purposes of this section shall be the price permitted under that ordinance.

2. Area median income (AMI) shall be calculated in accordance with the affordability regulations established by the City Manager pursuant to Section 23C.12.090.

E. Time of Payment of Fee. The developer shall be required to pay the applicable in-lieu fee no later than the closing date of the sale of a unit as a condition of said closing.

F. Use Permit Obtained Prior to Adoption of This Section. This section shall apply to projects for which all required Permits have already been issued, as long as no units on those projects to which this section would apply have been sold. (Ord. 6946-NS § 1, 2006)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Table 2 - Approved projects with more than 5 units: No Active Building Permit.															
#	Street Name	Zoning	Ext Low <30% AMI	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Applied For?	Subtotals		
2009	Addison	C-DMU					0	44	44	2018/2019	ZAB	No	Units in Approved projects, no BP yet applied for: 1,289		
2902	Adeline	C-SA & R-4		4	4	1	9	41	50	2017	Council				
3051	Adeline	C-SA		0	0	0	0	11	11	2016	ZAB				
2028	Bancroft	C-DMU		2			2	35	37	2019	ZAB				
2012	Berkeley Way	C-DMU	53	54	17		124	1	125	2018	SB35				
2211	Harold	C-DMU		0	0	0	0	302	302	2015	Council				
1601	Oxford	R-3		13	21	0	34	3	37	2018	SB35				
1200	San Pablo	C-W		5			5	52	57	2018	ZAB				
1201	San Pablo	C-W		0	0	5	5	22	27	2006	Council				
1740	San Pablo	C-W		4			4	48	52	2018	ZAB				
2100	San Pablo	C-W		0	0	0	0	96	96	2017/2019	ZAB				
2198	San Pablo	C-W		5			5	52	57	2019	ZAB				
2720	San Pablo	C-W		0	3	0	3	15	18	2007	ZAB				
2190	Shattuck	C-DMU		0	0	0	0	274	274	2019	Council				
2701	Shattuck	C-SA		0	0	4	4	20	24	2007	Council				
3000	Shattuck	C-SA		2	2	0	4	19	23	2018	Council				
1040	University	C-W & R-3		27	0	0	27	0	27	2012	ZAB				
1717	University	C-1		3	0	0	3	25	28	2017	ZAB				
2072	Addison	C-DMU					0	55	55	2018/2019	ZAB			10/26/18	Units in Approved projects, BP applied for: 284
2542	Durant	C-T		0	0	0	0	32	32	2018	ZAB			4/4/19	
2527	San Pablo	C-W		6	5	0	11	57	68	2018	Council	8/17/18			
3020	San Pablo	C-W		2	2	0	4	25	29	2007	ZAB	2/11/15			
2628	Shattuck	C-SA					0	78	78	2019	ZAB	5/9/19			
2556	Telegraph	C-T					0	22	22	2018	ZAB	12/19/18			
Totals:			53	127	54	10	244	1,329	1,573						

Table 3 – Approved projects with more than 5 units: Building permit issued.												
#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Est. Completion Date
1950	Addison	C-DMU	5	0	0	5	106	111	2016	ZAB	11/17/17	2019
2126	Bancroft	C-DMU	5	0	0	5	45	50	2016	ZAB	11/6/17	2019
2580	Bancroft	C-T	11			11	111	122	2018	ZAB	5/21/19	2020
2035	Blake	C-SA	4	0	0	4	78	82	2016	Council	8/10/17	2020
739	Channing	MU-R				0	10	10	2018	ZAB	6/12/18	Unknown
2510	Channing	C-T	3			3	37	40	2018	ZAB	4/5/18	2020
2631	Durant	R-SMU	0	0	0	0	56	56	2016	Council	12/1/17	2020
1500	San Pablo	C-W & R-1A	16	0	0	16	154	170	2016	Council	12/21/17	2020
2747	San Pablo	C-W	3	3	0	6	33	39	2007	ZAB	8/18/17	2020
2748	San Pablo	C-W	23	0	0	23	0	23	2014	ZAB	5/17/18	2019
2539	Telegraph	C-T	6	0	0	6	64	70	2016	ZAB	10/20/17	2019
2597	Telegraph	C-T & R-2	1	0	0	1	9	10	2017	Council	8/9/18	2020
1698	University	C-1	3	0	0	3	33	36	2014	ZAB	10/19/18	2020
2067	University	C-DMU	4	0	0	4	46	50	2016	ZAB	10/10/18	2020
2111	University	C-DMU	6	0	0	6	62	68	2013	ZAB	6/27/18	2020
2131	University	C-DMU	2	0	0	2	19	21	2013	ZAB	6/27/18	2020
2145	University	C-DMU	3	0	0	3	33	36	2013	ZAB	6/27/18	2020
1900	Walnut	C-DMU	7	0	0	7	73	80	2013	ZAB	6/27/18	2020
Totals:			102	3	0	105	969	1,074				

Table 4 – Approved projects with more than 5 units: Building Permit Issued after 2014 and now occupied.												
#	Street Name	Zoning	VLI 31%-50% AMI	LI 51%-80% AMI	MOD 81-120% AMI	BMR Total	Above MOD	Total Units	Entitlement Year	By:	Building Permit Issued	Complete Date
1935	Addison	C-DMU	0	0	0	0	69	69	2013	Council	10/17/14	5/26/17
2002	Addison	C-DMU	0	0	0	0	6	6	2016	ZAB	2/1/18	8/28/18
2024	Durant	C-DMU	0	0	0	0	78	78	2013	Council	7/8/14	12/7/15
2526	Durant	C-T	0	0	0	0	44	44	2014	ZAB	2/18/14	6/30/17
2532	Durant	C-T	0	0	0	0	7	7	2016	ZAB	6/23/17	1/30/19
2107	Dwight	C-DMU	9	0	0	9	90	99	2012	ZAB	12/1/17	3/24/17
2201	Dwight	R-S	7	0	0	7	70	77	2013	ZAB	6/3/15	11/17/16
2227	Dwight	R-3	0	0	0	0	6	6	2013	Council	9/7/15	5/25/18
2001	Fourth	C-W	12	0	0	12	140	152	2014	ZAB	4/1/16	7/31/18
2441	Haste	C-T	0	0	0	0	42	42	2013	ZAB	5/7/14	6/27/16
3132	MLK	C-SA	0	41	0	41	1	42	2007	ZAB	11/20/15	12/7/17
3015	San Pablo	C-W	8	7	0	15	83	98	2007	Council	3/19/14	2/16/16
2598	Shattuck	C-SA & R-2A	4	3	0	7	25	32	2014	Council	5/1/15	5/31/17
2600	Shattuck	C-SA & R-2A	12	12	0	24	99	123	2014	Council	1/1/14	3/17/17
2711	Shattuck	C-SA	0	0	0	0	18	18	2016	ZAB	9/6/17	9/1/18
800	University	C-W	4	0	0	4	54	58	2013	ZAB	7/15/14	12/2/15
824	University	C-W	4	0	0	4	44	48	2015	ZAB	8/20/15	2/6/18
1812	University	C-1	4	0	0	4	40	44	2014	ZAB	6/25/15	3/7/17
1974	University	C-DMU	8	0	0	8	90	98	2014	ZAB	9/29/15	10/3/17
Totals:			72	63	0	135	1,006	1,141				

